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Sheriffs & Jailors. No. 1.

✓ The word Sheriff denotes the governor or keeper of the shire or county. 1 Bl 339. 343. 4 Bac abt 430

✓ The mode of appointing sheriffs in Engl^d & here is very diff^t & diff^t in diff^t states — In this state he is now appointed for three years by the legislature. In Engl^d he is appointed by the king annually.
Bac abt: Sheriffs. 1 Bl 340-1

✓ The Sheriff ^{reside} must ~~abide~~ in the county for which he is appointed because he is a county officer & has no original jurisdiction out of his county.
4 Bac 435 Tit Sheriffs

✓ But where it is neccy to go out of his own county to complete an official act begun in his own county, his authority extends out of his own county. ^{for the purpose of completing it} As if the Sheriff of A is commanded to deliver a prisoner to Court in B. he has authority to carry him to B. for every official act is deemed in law an entire act. & the completion has reference to the inception. 4 Bac 435. Sheriffs

✓ If a prisoner escapes the Sheriff may pursue & take him in another county. he could not go out of his county to make the original arrest. (26)
Plou 37. Bac abt Sheriffs

✓ His authority in some cases may extend beyond the duration of his office where it is neccy that it should be so continued. viz to complete an act begun during his office. & he must complete the act begun — for the execution of legal process is an entire indivisible act. & the completion has reference to the inception. Plou 37.

Plou 37. Salk 323 Bro. I 73. 557. 1 Roll 8434

✓ And it makes no difference in this case whether his authority expires by its own limitation or whether he is turned out of the office.

(10)
Appointment &c of Deputies,

○ A case of great celebrity arose in N. York which was decided contrary to law -

✓ The same rule holds as ^{to} constables within the limits of their particular jurisdiction.

✓ The shff may at common law appoint deputies who are his representatives or substitutes & who as such have authority to execute all the ^{ordinary} ministerial duties of the shff office. Hob 13. Nib 240. 4 Bac 437. ^{the shff}

✓ By a st. provision of this state a shff of one county may be appointed a Deputy of the shff of another county & then the shff so appointed may act as deputy in one county & as shff in the other.

✓ The Deputy is removable at the pleasure ^{of} the shff. But while the deputy is permitted to remain in office his genl powers cannot be abridged by the shff - Salk 95. Hob 13. 4 Bac 437. For while the Depy is in office he is bound by an auth^y param^t to the shff to execute his duties - [depy shff.]

○ Shffs sometimes have induced Deputies to sign a contract that they would not execute process over a certain amt. & every such agree^t is void. For a Deputy may not by any contract bind himself not to execute any of his official duties. (H) Hob 14. Bac at the 42

✓ In Engl^d the Depy always acts officially only in the name of the shff never in his own name - for the Depy is not at common law a known public officer hence writs are never directed to a Deputy - Salk 96. Cow 65. Bac at the 41

✓ And this is the meaning of the rule that an under shff cannot return a writ. i.e. he cannot return a writ in his own name. (Cow 65.) The endorsement must be made in the name of shff

But in this state by st. a Depy may & does act in his own name. He has a known public officer & writs may be directed to him & usually are so.
 st. of Const. "civil"

Yet even here a writ directed only to the shff, may be executed & returned by a Depy either genl or special.
 Kirk 237

A Depy may not delegate his authy by appointing a sub-Deputy. A representative must act in his own person & never by proxy. this is a principle of common & constitutional law - Upon this principle a peer votes by proxy in eng? but a member of the house of commons cannot.

Yet a Depy may lawfully command the assistance of a third person in the performance of his official duty. He may empower another person as an assistant to act in his company or presence. for here is no assignment of authority
 1 Salk 96. 4 Bac' shffs p 442

If a shff direct a warrant to two persons either of them alone may execute the warrant. for the authy being of a public nature is several. Co Litt 151. Stra 117. 4 Bac 403 note & 442.

There is a distinction in this respect between a public & private authority. Thus if a gives a power of atty to B & C to sell his property neither B or C can alone sell the property &

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Shff considered as keeper of the com: jail.

If a Depy is guilty of any neglect of duty, the Shff may maintain an action on the case agt him because an action may be brot agt the Shff by the injured party for the neglect of the deputy. & there is always an implied or expres contract on the part of the Deputy to perform faithfully his duty - 1 Roll 98

4 Bac 442 The Shff may immediately bring this action

The usual remedy for the Shff is an action on his bond -

The Shff is ex officio keeper of the com: jail in his county. by common jail is meant the jail required by the common law.

The jailor is therefore a sort of under Shff appointed & removable by the Shff (Rule, therefore concerning Shff apply to jailors) 4 Co 34 of St 119. 4 Bac 443.

And the Shff has regularly no right to confine his prisoners in any other place than in the common jail unless expressly authorized by Statute

Therefore a Shff confining a prisoner in any other place than the common jail unless authorized by expres statute he is liable for false imprisonment Hob 202 Latch 16. 1 Siderfin 311. Salk 408. 5 Bac 171. Tit trespass.

Now in this state with the exception of New York there is but one jail in each county.

If however the common jail is destroyed by accident or if from any cause there is no common jail in the county the Shff may constitute his own house or any other building a pro tempore jail. for it (see next page) is the Shff's duty to provide a jail - (Latch 16)

In this state when a county is destitute of a jail persons in that county liable to be imprisoned may by lawful authority be sent to the common jail of the next adjoining county. St C. Tit 42. 522 -

The shff himself cannot in this state be imprisoned at all in his own county on a civil action for he is keeper of the county jail and may do what he pleases with it — If therefore the shff is arrested the arrest is void for he is keeper of the jail & therefore cannot be imprisoned. Kilb 48. and also decided that the writ will abate: This rule does not prevent a shff from being arrested in another county.

In Kilb 48 It was decided that if the shff was arrested in civil process the writ must abate. but I think this wrong for a copy is suff^t to hold him to trial — (see post).

Where a shff is arrested for a crime the rule of the common law is that he may be committed to a prison out of his own county tho' taken in his own county (ex necessitate rei) 3 Leon 394 Satch 16. 1 Mod 178.

In the st of New York it has been decided that if a shff is arrested by a coroner the coroner must imprison him in the coroner's house. § John 22-

This rule was adopted in analogy to the case of a shff who makes an arrest when there is no jail in the county & then he has an authority to constitute his own house as a prison.

But a coroner has no authority to make a jail when there is none — Satch 16.

But by the common law a shff may be arrested in a civil suit, ^{on mesne process.} in his own county but he may be discharged on fictitious bail. 6 John 24. On acct of this rule the decision in Kilb. (page ante) is Don't fail. He ought to be discharged without any bail for fictitious bail is unknown here.

He may certainly be held to trial here as well as elsewhere — The proper course here would be to leave a copy of the writ with the shff. and that we hold him to trial —

liability of shffs for the acts of the Deputy.

The shff is liable for many of the acts and defaults of the deputy i.e. the official acts & and defaults. qui facit per alium facit per se — 4 Co 98. 2 Leo. 158. 1 Vent 314. 5 Co 89. 1 Roll 94. The shff is liable when the act or default of the deputy is in law the act or default of the shff.

It is a consequence of this liability that the shff is entitled to take security from the deputies for the faithful discharge of their duty. Title 18. 4 Bac 441.

The official acts of the deputy are to all civil purposes the acts of the shff. and the official defaults of the deputy are civilly the defaults of the shff. But never criminally —

The crimes of one man can never be imputed to another.

the same principle holds in the case of master & servant &c. 2 Ed. Raym 1574. Doug 42. 2 ER 154. Hatch 157. 1 Vent 238. Bro fac 330.

But for the private torts of the deputy unconnected (15.)
with his official acts, the shff is not liable.

And this is the principle which is acknowledged
in the case of master & servant &c.

Bro & 175. 1 Leon^d 146. 1 Roll 94.

In consequence of this latter rule it has been
doubted whether if the depy levies an ex^{te} on the
goods of B when the ex^{te} is act^d of the shff is liable.

But at present it is settled that the shff is liable
for the depy here acts officially. 3^d Wilson 309
2 Bl R 832. Long 42. 4 Bac HH. May 27. 2 Keb 352.

And it has been decided in this precise
case that the shff is liable to B for trespass vi et
armis. but this is a departure from the gen^l
rule. the action in such case is usually trespass
on the case. Long 42. 2 Bl R 832. 11 (2) Keb 352.

May 27. The reason assigned is an artificial
one viz that the shff & his deputy are considered only
one person. 2 Keb 352. 2 Bl R 834. In the case of
master & servant the Master would be liable only in
case

For any defect of official duty on the
part of a depy. the shff & he may is liable to the
person injured & the shff has an immediate action
agt the depy. Cow 403. 406. Sack 18. 5 Co 89
Cap & Dig 603. 1 Roll 94. 4 Bac 443.

The reason of this rule is that as the depy
is not a known public officer no action can be
maintained agt him as a Deputy.

The rule would be the same in case
of neglect of duty by the Depy. the shff and he may (16.)
is liable. In pa. Depy neglects to return a writ
for the writ not being directed to the Depy the writ does
not show that the Depy was bound to return it.

Liability of Shffs for their Dep^{ys}

(16)

But for a positive tort committed ^{under color of his office} by the Dep^y both Dep^y & shff are liable for the suit is here ag^t the Dep^y as ag^t a stranger and is not founded on the writ re. If a Dep^y break the outer door or window of a house both Dep^y & shff are liable

1 Bro 311. 13 Mod 18. 1 East 106. 3 Lev 258. 1 East 106. 3 Lev 258. - is q^ua for negligent escape by the Dep^y shff alone is liable non vly escape

For the defaults & neglects of a special dep^y appointed at the request of the shff in a case & on the nomination of the shff the shff is not liable to the shff in the process. 4 T R 120. Esp^r Dig 607

In this state however a Dep^y is liable as well for neglect of duty as for positive torts for he is here a known public officer by Statute But this liability of the Dep^y does not exempt the high shff - either are liable at the election of the injured party.

All the above rules relating to the liability of the shff for his Deputy apply to the jailor. for jailors are deputies for the purpose of keeping the prison.

If a shff dies & after his death the prisoners ~~in the~~ jail escape before another shff is appointed no one is liable if no one assists them in escaping. 3 B 72. Bro C 366 4 Bae 445. For the death of the shff ipso facto revokes the authority of the jailor.

And the only remedy in this case is recaption
by the Shff next appointed 1 Mod 14. 4 Bac 415

But suppose during such an interregnum
the jailor merely omits to enlarge his prisoners Is
he guilty of false imprisonment? certainly not for
he cannot be obliged to enlarge them, and indeed
he has no authority to enlarge them.

The Authority & Duty of Shffs & of depys
By the com. law the Shff is a judicial
officer as well as ministerial &c 1 Bl 343. 4 Bac 448. 9.

In this state the authority of Shff is
merely executive & ministerial.

As conservator of the peace he is an
ministerial off. executive officer?

A ministerial off: is one who executes
the law in obedience to ^{the command of some superior officer} some other authority

An executive Off: is one who
executes the law in obedience to the law
itself & not to any other authority

The Shff as conservator of the peace
is said to be the highest executive officer of
the county 1 Bl 343. 1 Keb 237. i.e. he is the
highest executive county officer.

Duty of the Sheriff as an executive officer

(187)

At com: law without precept as an executive off: without any warrant he may apprehend those who break the peace, ^{or attempt to break it} & bind them to keep the peace. He cannot bind to the peace. 2^d He is bound to apprehend traitors felons & all high offenders and to imprison them.

3. He is bound to defend his county from invasion & from enemies abroad as well as from insurrection &c. 1 Bl 343. 60 Litt 168. 4 Bac 430.

And for these purposes he has authority to command the posse comitatus to assist

He is in this state empowered by stat^s to do those things which he is required to do by the common law.

He may here command the assistance of all of age & ability within his own county.

Constables within their limits have the same power.

As a ministerial Off he is bound to execute ^{legally} all process properly directed to him & if he neglects this duty he is liable to imprisonment &c. and also to an action 1 Bl 344. Plou 74. 4 Bac 449 Apr 60. on the case in favour of the person injured by the neglect. He is liable in bon. to an action on the case for not returning a writ whether it is executed or not.

In Engl^d In such case a summary ^{remedy might be} remedy is obtained. Doug 446. 2 H Bl 233. 3 Bl 291 done in court. Esp^d Dig 616. in a rule is made for him to return it and if he neglects he is proceeded ag^t by attachment.

And the Shff or his deputy may as a ministerial Off command the posse comitatus when resistance is made or expected

41 Bac 453

In this state he has the same power and with the advice of the ² justice of the peace & in such cases he may call out the whole militia as an organized body & take the command

Tit^h Shff St Bonn.

A Shff or Deputy may not break the outer door or window of a ^{dwelling house} ~~dwelling house~~ to arrest him or seize his goods on any civil process.

The foundation of this rule is to be sought for in feudal customs 5 Co 91:28 bon 1. Cro E 909. 4 Co 62. Esp^d Dig 604.

Kilb 353. It is said that if the Shff were permitted to break open the dwelling house it w^d be exposed to thieves. & by the stat of Bonn^t Shff is bound to give a written receipt for every writ d^d to him (if required) and if he refuses he is liable

Breaking into doors &c.

20)

It was formerly held that where the
outer door &c was broken in a civil case the
execution was good but the Officer liable for
trespass 5 Co 92 b 5 Collap 155.

But the modern practice is to discharge
a person arrested in this manner in a summary
way by motion & this supposes the execution of
the process to be void. still the Ct may use their
discretion in such case — Cow 1. 2 Bl 2 323
2 Bac 367. 4 Do 454 note. 554. If the person arrested
had been guilty of any misconduct the Ct w^d not grant this
summary relief! If the party arrested cannot obtain
relief by motion he may have recourse to
his writ of Habeas corpus which is stricti juris &
cannot be denied.

What is legally necessary to constitute
a breaking?

to constitute a breaking in this case there
must be such a violent breaking of some fastening
intended as a protection. There must be some
violence such as involves a breach of the
peace. There is no precise law however which
defines breaking. (In the law of burglary the lifting
of a latch is suff. to constitute a breaking)

(must be such
a breaking as
to expose the
house to thieves
and robbers.)

This breaking is construed strictly
ag^t the person to be arrested & in favour of the
Shff.

And when the Shff has lawfully gained
admission into the house on refusal of peaceable
admission into the inner rooms he may break
the inner doors & chests &c. but he must not
do this wantonly Cow 67 Hob 62. 263 Esp^r Dig 604
605. Comb 17. 327 Cow 4.

The privilege of castle extends only to the person who resides in the house. If A takes refuge in the house of B & the shff has an exⁿ or civil process ag^t A. in this case on request for admission by the shff he may on refusal break the doors windows &c. Hob. 62. 5 Co 93 b 1 Sidw 186. 4 Bac 425. same if A's goods are in the house of B.

Lts of justice in latter times have restrained this privilege as far as possible. and it has been long questioned in these states whether (Cow 7.) it ought to be allowed at all. but it is allowed in criminal as in Engl^d.

On criminal process this privilege is not allowed. tho' the shff even in this case may not unnecessarily break doors windows &c. 5 Co 91. 4 Bac 454.

On a process to compel a person to find surety for keeping the peace - after demand of admission the shff may break &c. - 12 Co 131. 4 Bac 454

The rule is the same on forcible entry on detainer. (H) for the same reason the last process is a criminal process.

If a person having committed felony is pursued with or without warrant & by a public or private person his house may be broken. 4 Bac 455 2 Hawk 139.

But if he is not proved to have committed felony. the person thus acting without warrant may afterwards be sued in trespass. if he had ag^t him (H)

Breaking outer doors &c.

(22)

+ Bac 406
456.

One's dwelling house may also be broken to suppress an affray or to prevent it. If one has created an affray & is pursued either with or without warrant to his (1 Root 66) own house the house may be forcibly entered — This last rule holds only in an affray. In a writ of Habeas facias pro populo the Shff may break doors &c. tho' this is a civil process. & this is the only exception in favour of a civil process. H. 40 91 b. H. Bac 455. for the very object of the writ is to give possession of the house and there is no mode of executing it without breaking the house if it is fastened. & But the breaking in this case is not the breaking of the dwelling house of the Def for the judgment on all these ex. ipse decides the house to be the house of the Plf. &

15-11-18

(24)

Sheriffs & Sailors, Dec^r 22^d 1824. No 2.

On civil process the door of a barn or outhouse not adjoining the mansion house may be lawfully broken tho' in the law of burglary it is diff^t

1 K. b 698. 1 Sidw 16. 4 Bac 455.

The rule is the same with regard to a store tho' a diff^t opinion formerly prevailed in this state. At present it is the practice to break open stores tho' there has been no direct decision on the point.

* This rule sup^{ts} the store to be part of the m^{an} house and that the owner do not lodge in

If a sheriff's bailiff attending the sheriff lawfully enters the mansion-house ^{and is confined within} the sheriff may freely enter the house to remove the bailiff & being in he may arrest the person or attack his goods.

Bro Jac 535. Palm 52 4 Bac 456

And if a person once arrested on civil process escapes to his house the sheriff may then if necessary break into his house to retake him & this is always the case in escapes Palm^r 54. 1 Roll's 138 4 Bac 456. For the original arrest attaches in the sheriff a right to the custody of the deft. 508 512.

If a person illegally arrested by the breaking of the door is afterwards arrested on another process ^{while in custody or another spot by another officer} the last arrest is good unless some collusion between the officers. - see as if collusion (ag^t 2 Bl 2 523) Esp^r Dig 605.

By St 29 Bar 2. No civil process may be executed on Sunday & if so it is void. We in Conn have a similar statute. The Off in such case is liable for false imprisonment -

Sack 78. 4 Bac 456. 656

This is not a rule of the C. L. - If the off on Sunday seizes goods he is liable in trespass. If he arrests the person he is liable in false imprisonment.

In this state diff^r opinions prevail'd as to the meaning of sunday but now it is settled that sunday now includes only the day light of the first day of the week. 2 Bon Rep 541 Fox & Abel — (see 2d, vide Stat Court Ed of 1821)

But this stat rule applies only to original arrests. — A prisoner who escapes may be retaken on sunday. for tho' the st makes no such exception yet such is the reasonable construction 57 R25. Salk 626. 6 mod 95.

2 Ed Raym 1028. Bellod 253.

Now the reason of this exception is that the recapture is only a means of continuing the Off's prior custody. The Off has the same right to retake a prisoner as to resist his escape. He undoubtedly may resist his escape on sunday.

In case of an illegal arrest the bt ^{may} will discharge the prisoner on motion.

6 mod 95. 4 Bac 456 & 5 mod 95

And if the bt should refuse his motion he has remedy by Habeas corpus or if the bt is not in seipon —

Doctrine of escapes.

An escape is an unlawful evasion of legal restraint or custody, 2 Bac 233. Tit Escape.

When therefore a person being under a lawful arrest evades that restraint either violently or clandestinely or is suffered to go at large before released by law (the party escaping) is guilty of a wrong either civil or public according to the nature of the arrest. (The off. from w^h the escape is made)

(But) If the process on w^h he is arrested is a civil process his escape is a civil wrong; If the process is criminal the escape is a public wrong.

It is essential then to an escape in law Arrest that there be a previous legal arrest —

Exp^d Dig 607. 8. 9 Cow 65

An arrest to be lawful must be made in pursuance of lawful authority.

But a lawful authority to make an arrest may exist without writ or warrant. (It) 11 Bac 455.

As to lawful arrests without writ or warrant see Tit^h "False imprisonment"

When the arrest is made by virtue of a writ or war: the g^l rule respecting its legality at comm. law is this.

If the C^t from w^h the writ issues has jurisdiction of the subject matter in the writ & the process itself is regular. the arrest under it is lawful & the evasion of such arrest is an escape —

It is no^t objection to the legality of (v post) the process that the process is erroneous —

2 Milon 384. 8 Co 141 b. 5 Co 64. Str 509
Exp^d Dig 333. 391. 659.

This rule presupposes that the mode of making the arrest is lawful. It goes no further than to the question of authority.

If the Ct issuing the process has not jurisdⁿ of the subject matter or if the process is irregular the arrest under it is unlawful & in this case in law there is no escape. 2 Bac. Escape a. p. 234 Esp Dig 608.9. By subject matter is meant the alleged offence.

In this state unless the defect of the Ct's jurisdiction appears on the face of the process the Off is justified tho' the arrest is void. ~~In the Eng~~ this distinction is not made ——— Hüb 110.152.

If the arrest is on meane process & is lawful the prisoner's going at large is no escape provided he surrenders himself on the appearance day & puts in bail above as required by practice. 1 Bl 290

Here if the prisoner is forthcoming during the life of exⁿ the prisoner's going at large is no escape — the process in this case is meane process & the arrest supposed to be lawful.

In the main object of arrest on meane process is in the first place to have the deft present in Ct & to hold him in readiness to respond to the judge.

By the subject matter is meant the thing in demand & the cause of complaint or action of the cause of action.

Tho' the Ct has complete jurisdiction of the subj^t matter. the process may still be void as being irregular.

Thus if a process is made returnable to any other term of the Ct than to the first term of that Ct to which by law it can be returned, the process is irregular & the arrest under it is illegal. The process is utterly void not voidable. It is irregular not erroneous.

3 Wilson 341. Salk 273. 2 Esp 608: q. Barth 148 bro & 148. esp Dig 328: q.

void process or irregular is a nullity from the beginning but erroneous or voidable process is good until & unless it is avoided in due course of law.

Any arrest made under an erroneous process will justify the Sheriff. But he is not justified in making an arrest under an irregular process. ✕

In this state mean process is not usually issued by the Ct. to which the writ is returnable. Therefore the gen^l rule of the common law will not apply.

As to mean process the rule in Com should be thus expressed.

If the process issues from competent authority & is returnable to a Ct having jurisdiction of the subject matter. the process is good & arrest under it good. supposing the process regular.
A

At comm: law an Off having made an arrest on final process cannot delegate to a third person ^{or to a deputy} authority to keep the prisoner, & the Off & person detaining the prisoner in such circumstances are guilty of false imprisonment ^(same in case of magistrate) (D + P 24) (and this also is an escape in the officer, yes in magistrate process). The technical reason of this rule is that the prisoner in hands of the third person is not in custody of the law & is not in the custody of lawful authority for the Off cannot delegate his authority.

The rule may also be founded on the extreme rigour with which the law looks upon all abridgments of liberty. —

This rule is not very much regarded in practice in Common. & it is a matter of some doubt what a Ct would do if an Off were sued for false imprisonment in such case —

The second requisite to an arrest in law is that the arrest be actual. —
Esp^r Dig 604.

Bare words will never amount to an arrest. There must be an actual touching of the person to be arrested or something tantamount to it. If the Off says "I arrest you" & requires him to follow him (the Off) the obeying of the party arrested is tantamount to touching his person.

Idem 236. Salk 79. 186. Bull. 126. 62
Esp^r Dig. 604. & if the Off has the staff in his power & the staff is substantially to the authority of the Off then it is considered tantamount to touching the person of the Off.

1st If an arrest is made under an *ex* in favour of A & a writ is handed to the Sheriff in favour of B while the person arrested in the custody of the Sheriff he is deemed in law to be arrested on the writ of B. without the formality of bringing the person on the second writ. 5 Co 84. Lalk 237.

2^d Bac. escape p 236. The Sheriff therefore may be guilty of an escape in both processes. But this rule does not hold in every case. if the Sheriff may take on the *Ex* the goods of the Defendant he may not choose to arrest the body of the Defendant on the second *ex* & therefore I think the rule holds only when the second *ex* is *ca. ad satisfac.* on which nothing but the person of the Defendant may be taken. - He cannot probably therefore the rule does not hold at all.

3^d Requisite.

The arrest to be effectual must be regularly & legally made & if not there can be no escape. — Thus in a civil cause there must be a warrant or the arrest is irregular (this refers to an original arrest) Cow 64 Es^t Dig 604. 2 Bac 236.

It must be made by authority of the *Off* to whom the writ is directed. i.e. It must be actually made by the *Off* himself or by some one in company with the Sheriff under his direction.

By being in company of the Sheriff means only that the *Off* is near his apartment & in pursuit of the same object. Cow 65. Es^t Dig 604. Collocl 211

An arrest on Sunday is not regular & there is
no escape if the Sheriff permits the prisoner to go at large. *Collod 95.*
Salk 75. Esp. Dig 605.

The case is the same when the arrest
is made by unlawfully breaking an outer door
window &c. of the defendant's house. *Corv 9*

If an Officer with an attachment to his an
opportunity to arrest him & neglects to arrest
him & the Defendant eventually is not arrested the
Officer is liable on the case not for suffering an
escape but for neglect of duty.

Collod 23:4 10 26 251:5
Ld Rasm 331 1 Day 128. Frost & Dwyer,

If an Officer exercising a general
authority makes an arrest he is not bound
previous to the arrest to show the process
to the Defendant not even if he is required to
do so by the Defendant.

For it might be attended with
hazard by giving the Defendant an opportunity to escape.

But after the arrest within a
reasonable time he must produce his process.

96:69

60 1485

152 157

Esp. Dig 604.

But where a special Depy or a bailiff makes an arrest he must if required show his procep. & if he fails to do so the Deft may resist the arrest with any necessary violence.

But if the procep is not demanded he need not volunteer to discover his procep.

9 Co 69. Bro: Jac 485. Esp: Dig 604
S. J. R. 187. 4 Bac 452.

Escapes are voluntary or negligent.

3 Co 52. 3 BL 415.

A voluntary escape is one which takes place with the consent of the Off. having the custody of the prisoner.

A neg^t escape is one whl takes place without the consent ^{of the} Off. having the custody of the prisoner.

3 BL 415.

Every person committed to prison is to be kept in safe & close custody till delivered by due course of law. (But by close custody is not of course meant confined within the walls) If therefore ~~if~~ the Shff permits a prisoner once committed to leave the limits of the prison-yard but for a moment he is guilty of an escape.

3 Co 44. 1 Roll 86.

3 BL 415. Roud 36. "Soc Escape" h.1.

But by close custody is not necessarily meant that the prisoner be confined to the walls of the prison. He is in close custody while in the limits of the prison-yard.

Voluntary escapes

If a Sheriff admits to bail a prisoner not bailable by law he is guilty of voluntary escape.

If he permits the prisoner to go at large from the prison even with a repeal he is guilty of voluntary escape. 3 Co 44
1 Roll 516. Plow 36. 2 Bac 237.

Where the prisoner has been actually committed these rules hold with any reference to the nature of the process whether mesne or final.

And if a person is merely arrested on final process the rule is the same.

2 T R 176. 1 Br P 36.

qualified in count by Stat. part 37.

Prisoners committed on criminal process are to be confined within the walls.

Those arrested on civil process may by procuring security to save the Sheriff himself be permitted to enjoy the liberties of the prison-yard. 2 T R 126. 131.

It was once decided in Eng^t that if a pris^r committed on Ex^t is brought out by a writ ^{from a t^y} of competent jurisdiction to testify the shff is liable for voluntary escape. 1 Sid^r 13. 2 Bac 238:9
A rule of this kind could not long be considered law. But 1 P 42 1 Root 72
Kilb 137.

But if the Off who brings out a pris^r on Hab: cor: grants him unreasonable liberty. he is guilty of voluntary escape. The shff must bring his pris^r to it in reasonable time & by the most conv^t route.
Id Rayn 241. 399. 788. 3 Keb 305.
6 mod 78. Bro Bailt.

If an Off makes an arrest on final procep he must commit his pris^r within reasonable time or he is guilty of a voluntary escape. He must not permit him to go at large with a keeper &c. He must not take his word that he will deliver himself in a day hour &c.
1 B & P 24. 2 R 176.

A shff has no right to discharge a pris^r committed on Ex^t even on pay^t to himself of the contents of the Ex^t.

for the shff is not the plff's att^y.
Bro Eliz 404. 1 mod 494. 5 St 225. 366.

2 Bac 248. 14 East 468. Id Rayn 399. 12 mod 244 (offic^o.)

even if the shff was the Off who held the Ex^t & committed the pris^r the rule is the same. In such case however if the plff accepts the money on the Ex^t from the shff before he has brought an action for escape the shff cannot afterwards sue the shff. (26)

(after the shff has committed the prisoner he is as to him funct^o in offic^o)

If an officer arrests the body only of a thief the sheriff having merely arrested the thief discharges him on receiving the amount of the fine the sheriff is liable for voluntary escape. If the plaintiff receives the money however he waives his right of action. But if the fine was a good one. The rule is, sheriff.

The same qualification prevails here as in the former rule. "If the plaintiff accepts &c"

14 East 468. Id Raym 399

12 Mod 214.

If a sheriff marries a woman committed on bail he is ipso facto guilty of a voluntary escape. Plow 17. 2 Bar 237 for he is bound as her husband to discharge her.

If the sheriff appoints one of his prisoners turn-key of the jail he is ipso facto guilty of an escape. Hardray 311. Esp. Dig 808. He is guilty of a voluntary escape only quoad the prisoner thus made turn-key.

4. of Const.
tit 42. 58.

If a prisoner having the liberties of the prison yard manifests a disposition to escape. It is the duty of the sheriff to commit the prisoner to the walls & if he does not so do the sheriff is guilty of voluntary escape. 2. 7. 131. 1 Root 106. 137:8. 1 Cow 544. 2 Const 477

If therefore a prisoner once transgresses the limits of the jail yard and the sheriff has notice of it if he does not confine the prisoner and the prisoner escapes the sheriff is guilty of voluntary escape.

But if a prisoner having the liberties escapes before he has manifested such a disposition or before it is known to the officer the sheriff is guilty only of a negligent escape (Sh)

But a shff is not bound at com: law to grant the liberties of the prison yard in any case whatever. however ample the security offered. But he may lawfully grant the liberties to one committed on civil process. & if the pris: escape the shff is not liable for a voluntary escape but only for a negligent escape - 27 R 131.

And after he has granted the liberties of the yard he may at his discretion recommitt the pris: to close confinement. (Pl^t This is the 1st rule - but it must be qualified under our law - here he must show some cause.)

But by a recent st of Conn the shff is bound on suff^t security offered to permit a prisoner committed on civil process to enjoy the liberty of the yard. (St Conn Tit 42.58.)

The County Ct in this state have auth^y to order into close confinement a prisoner committed on civil process unless the process issued from the superior Ct.

& if the process issued from the sup: Ct that Ct has the same power. —

Negligent escapes

Any escape ag^t the consent of the Off is a negligent escape.

If a person lawfully arrested evades his restraint by fleeing from the Off or by violence the escape on the part of Off is negligent. so if a pris^t committed escapes by breaking the walls &c.

An escape by rescue is a neg^t escape

3 BL 416. Bro Jac 419. 2 R. & B. 130

And when an action for escape is brought ag^t an Off: his endorsement whatever it be is suff^t evidence that the writ was delivered to him. -
Cow 63:5

There is a diff: between escapes on final & on meane process. & between the consequences of the one & the other.

If a person arrested on final process is permitted to go at large even for a moment the Off is liable for ^{voluntary} escape 2 R 172 3 BL 415 Exp Dig 605:6

2 JR 172
3 BL 415
Exp Dig 605:6

And if a Off having arrested a pris^t on final process permits him to go at large for a given time or a season that he shall be surrendered^d him at a future time. the surety is void. the Off is guilty of voluntary escape & if the pris^t is afterwards surrendered & the Off commits him he is guilty of false imprisonment. for after the Off has been guilty of voluntary escape he has no right to make an arrest again on the warrant.

It has been decided (2 Root 133) in Conn
that such ~~law~~ ^{bond} is good. but this is an old decision 2 Root 158.
& probably would not now be considered law.

But if the arrest is on mesne
process the prisoner may go at large without
subjecting the off. if he is forthcoming on the
return of the writ. & in the state if he is
forthcoming before the return of the writ 2 Blk Salk 408.
1049. 3 Blk C. 415. 27 R 142. 5 Ib. 37. 2 Wilson 295
for Conn Kirk 209. 382. 434. This rule supposes
that the person arrested has not been committed. ante 34.

But if he is not thus forthcoming
the off. then is liable for an escape to an action
on the case. But not if he is forthcoming.

The escape in this case is negligent. for
the enlargement is legal 2 Bac escape h 240
Brocc 643. 652. 868. 2 Warden 294. Exp^d Reg Cog
2 Wilson 294. 2201207

But if a person arrested on mesne
process is committed allowing him to
go at large subjects the off. to an escape.
When the off. enlarges him before
commitment he is supposed to do it on
bail. But he may not take bail after
commitment

2 Wilson 294/1. 2 Blk 907
Exp^d Reg 660. Salk 271. 2 Wils 27 or 294.

We have a st requiring the off.
to take bail after commitment. on mesne
process.

13. It then is a similar rule in
Engl^d. (23 Hen 8th). 1. 4 Blk 474
1 Bar 2-5 Tit 'bail'

Where the plff after escape on mesne
 process proceeds, to judge it is no waiver
 of his right to proceed ag^t the shff, for
 escape — 2 Wils 294. for the right of
 action is complete on the enlargement by the shff
 or jailor. —

(41.)

Sheriffs & Jailors Dec. 24th 1824. No. 3. -

If one arrested on mesne process escape the shff has an action agt him as well as the Plf agt the shff & both actions are triable on the case 2 Bue 245. "Escape"

But in this case the damages to be recovered agt the shff are presumptive & cannot be recovered unless the Plf shows that he had a legal claim agt the party escaping

2 Nil 295. 2 D.R. 129. 2 Id. 85. 4 D.R. 611.
5 B. 40:1. 2 Stra 573. Exp. Dig 609.

And in no case of this kind can the plf in the process recover of the shff more than his claim agt the party escaping 1 John R 215

In the Plf's action agt the shff in such case an acknowledgment of the party ^{escaping of his} indebtedness is good agt the shff.
1 Exp. Rep 109. Peck's R 65. 4 D.R. 436.

The principle of this rule of evidence is in the Plf's action agt the party escaping himself this acknowledgment would be good agt the party escaping. but by the fault of the shff the Plf has lost his opportunity to take advantage of this acknowledgment agt the party escaping, he ought therefore to be allowed to take advantage of it agt the shff.

For an escape on final process the
 plff has his election of two remedies
 viz an action on the case or an action
 on the St of Westminster 2: Sec of debt
 agt the shff. 2 H Bl 110:13. 2 T R 129
 132. Stra 153. Exp^r Dig 203. By the St 1 Richard 2?
 the same action of debt is given.

These sts are *prima facie* the
 law of this country.

When st^s extend to escapes before
 commitment as well as after commitment on
 final process. But there is this difference
 between the two actions.

If the plff's action is "case" he sues
 for presumptive damages & the jury may give
 what damages they please not exceeding the
 claim of the plff on the process. 2 T R 129.
 Exp^r Dig 609. If he brings debt he sues for the
 precise amt of the esc^w. (Bye abt "Escape" f) and the jury are
 bound to give that amt. It follows from this rule that the
 party escaping is a competent witness agt
 the shff in this action on the case for
 recovery agt the shff does not discharge
 the escaper from his debt. Peake's Br. 171:2
 Peake's R 124. 2 T R 129.

Some of the Books express the
 rule thus if the jury only award special
 damages agt the shff the plff may still
 recover agt the escaper. 2 T R 129. 2 Wils 295
 Bal. N. D. 69. Exp^r Dig 611.

But if the jury should award the whole
amt agt the shff I think still the whole amt
may be recovered agt the escape by the creditor in the
ex^{or}

Because the action agt the shff is
not for the same cause as the act agt the
original debt & the rule of damages in the
two cases is altogether diff^t.

5 T. R. 40:1. Peak. R 124. Peak. Ex 172

3 Esp^r 208. 1 Day 22.

But if the shff brings "debt" agt the
shff the jury must give the whole sum for wh^{ch}
the orig^l debt was charged in ex^{or} together with
the costs &c. 2 T. R. 126. 129. 132. 2 Bl. R 1048.
Esp^r Dig 609.

And this recovery in debt agt the shff
is a bar agt the recovery by the shff of the orig^l
debt agt the escape. (Sh.) Here the debt is
transferred from the creditor to the shff.

If a person arrested on mesne process
is arrested but not committed & is rescued the
shff is excused. But if the person were arrested
on final process & is rescued the shff is not excused.
3 Bl. 416. Gro Jac 414. Cro E 573. Esp^r Dig 610

* By our Lt the jury seem to be required to give the
whole debt in damages agt the shff where the escape
is a voluntary escape and from prison whatever be
the form of the action case a debt.

But when Def'ts committed on mesne process, rescue is no excuse for the shff unless made by public enemies. Rescue by insurgents traitors &c is no excuse. 1 Roll 808. Stra 482 1 Co 84 a. Esp^d Dig 610. (and indeed in this case nothing but the act of God or of public enemies will excuse the shff) The rule is the same where the arrest is on final process whether the prisoner has been committed or not. (26)

4 Co 84 a
2 H B 113
4 JR 789
Esp^d Dig 610
Bac abr.

Prisoner on the limits becomes insurgent & escapes shff held excused by the law not for the act of the shff. But the shff on the orig^l process may maintain an action agt the rescuers whether the arrest were on mesne or final process.
Cro Jac 476 4 Co 110 Cro 6109 Hutt 98

Where the shff is liable for the rescue the shff may maintain action either agt the shff or agt the rescuers but by suing the rescuers he waives the action agt the shff.

No authority for this rule wht is certain.

Exp^d Dig 657:2. 512

Callod 211 Cro Bar 775 109 Hutt 98. (By commencing an action agt the rescuers the shff induces the shff to think himself safe) If the shff recovers agt the rescuers he plainly cannot recover agt the shff.

Stra 482 If a shff bring up a prisoner to testify rescue is no excuse to the shff.
Exp^d Dig 610

Fire except by lightning is no excuse to the shff.

The form of action agt the rescuers may be either trespass or case. Robert 150 Cro. Jac 436

If we can the rule is contrary to analogy - principle

On principle the only action for the plf in the original action agt the rescuers is case

For there is no possession of the body sufficient to warrant trespass. The damage too is consequential not direct. The violence used by the rescuers is not directly injurious to the Plf.

In an action agt the rescuers the jury may give the whole or a part of the plf's original claim. Expt 125 687. 589. 6 mod 211.

Expt 4 Buller say that if the jury give a part of the original demand agt the party rescued the Plf may pursue his original demand agt the party rescued.

Expt 125 687. Bull 1. 269.

But I think that if the jury give the whole of the plf's original demand agt the party rescued still the Plf may pursue his original demand agt the party rescued. the two actions are not brought for an and the same thing.

The Plf is a good witness agt the rescuers who could not be if he were discharged by a recovery.

In an action agt the rescuers the Plf's return of rescue is conclusive of the fact of rescue. and it is also conclusive in an action agt the Plf for an escape. Broe 781
1 Vent 224
2 Vent 175
6 mod 245

But the Plf may in such case if his return is false be sued in case for a 'false return' and here the return is not conclusive -- (Plf)

Difference between the consequences of voluntary & negligent escapes
 In case of voluntary escape it was formerly
 held that the party escaping was entirely discharged from
 the debt or claim or whatever it might have been &
 the whole debt was thrown upon the Off^r

Hob 202. 2 Bac' Escape 209.

This is now overruled. At this time the
 Plf when the process is final ^{and the escape voluntary} ~~or the original judgment~~ ^{or the original judgment} the Plf
 may have a new action of debt ag^t the party escaping
 or a new facies facias ag^t the party escaping

Hob 00. 1 Sidw 330. 2 mod 136.

1 Kent 4. 269.

Indeed it is also said that the Plf may
relate the party escaping on the original ex^r not
 withstanding the endorsement.

Bul N. P 09. Exp^r Dig 611

By the Stat^s 8 & 9 Wm 3. The plf on
 the ex^r may obtain a new ex^r on motion
 without a seme facias.

3 Bl 415. 2 Bac 241. "Escape"

And when a voluntary escape is suffered
 on mesne process the Plf may relate on an
 escape-warrant 3 Co 526. 2 Wilson 295. Exp^r Dig 611

But the Off^r permitting a voluntary escape
 1 Sid 330. can never relate the party escaping or maintain
 any action ag^t him 3 Co 52. 2 D R 176 3 Bl 415
 In the Off^r is participating

And if the Off in such case should retake he is guilty of false imprisonment

1 Ven 269 27 R 176. Bac abt Escape &

And a bond given to save the Off harmless agt the consequences of a voluntary escape is void as being agt law. 1 Pow on Con 196. 7 10 Co 100 b 2 Bulst 213. But a bond given to indemnify the Shff agt a negligent escape is legal & valid. 1 Root 151. (1st)

But the Plf in the procap may retake the party escaping even tho' he has before recovered judgt agt the Shff &c. provided it is said that the party does not recover agt the Shff the whole of his claim agt the escapee. but this qualification I think wrong. (see anteq. Bull et. P 69. Esp. Dig 611 it ought to be "provided the action agt the Shff was debt"

The plf may always retake the escapee & recover his debt agt him in all cases except when the action is recor? agt the Shff in an action of debt according to the St. Westminster 2^d & Rich²

In case of a negligent escape the Off from whom the escape is made may recover agt the party escaping & may retake him. for he is not in fault Bro Eliz 234. 3 Co 52 b. Esp. Dig 612. 3. and indeed the Off is bound to retake him if he can.

And if the Shff has taken a bond that the party must? shall remain a true prisoner he may recover on that bond in case of negligent escape 1 Root 151.

X But a sheriff's bailiff cannot recover
 ag^t the party escaping. even tho' the shff has
 recovered ag^t him [the bailiff] for a bailiff is
 a mere private undertaker. not liable to the
 pif in the procep nor even to the shff himself
 unless by exp^{ress} contract. ³⁴⁹
 Bro Jac 247. Esp^{ecially} 613

1 Bl 245.

A Bailiff is a person whom the shff
 authorizes to make an arrest within the limits
 of his hundred. 1 Bl 245

If the bailiff has by his contract
 bound himself to indemnify the shff ag^t a negligent
 escape, he is in the case of any private person
 who has voluntarily bound himself to indemnify
 another. ag^t a wrong from a third person.

It has been decided in this state that
 a party escaping may be retaken on an escape-
 warrant in a neighboring state. The procep in
 this case must of course be rescues on an escape
 warrant at various times, under an escape from under procep

The principle of this rule that the
 shff has a personal claim on the party escaping
 1 Root 107

If a person arrested on criminal procep
 escape, he is at com^{mon} law guilty of a misdemeanor
 & if he escape by breach of prison wall, he is
 guilty of felony

4 Bl 129:130. 2 Haw 122:8-

This is indeed the rule of the com^{mon} law but it seems to
 have gone out of use. It never appears to have been
 put in execution here

The Off who has arrested a felon & suffers a negligent escape is liable to a fine &c.

For a voluntary escape of a felon he is liable to the punishment of the felon as an accessory after the fact.

1 Hale Pl. of Cr: 590. 2 Hawk 134
4 BL 130.

But the Off is not punishable as an accessory after the fact (can never be punished as such until the principal is convicted & sentenced.

But before ^{sentence} punishment of the principal the Off may for a voluntary escape be punished for a misdemeanour in having permitted the voluntary escape of one arrested on criminal process.
4 BL 130 & (Pl.).

Where for a negligent escape the Off has been made to pay the debt due from the party escaping the Off may maintain 'indebitatus assumpsit' agt the party escaping. & the same rule has been held where the factor or Depy. were guilty of a voluntary escape. But it is now held that if the Depy. suffers a voluntary escape & the Off is compelled to pay he can (Peck's Ca: 146.) maintain no action agt the party escaping. Peck's Ref: 146. J.R.

Exp. Dig 612

If after negligent escape the Off retakes the party "on fresh suit" before action brought agt the Off no action can then be brought agt the Off. (But a recaption subject to action but will not be a bar) The expression "on fresh suit" means nothing.

1 Stra 908. 3 Co 44. 52 2nd 126
1 Ven 211. 17. Exp. Dig 611. 1 East 106.

But if an action is brought agt the shff before recaption the shff cannot by recaption afterwards defeat the action. Bro & Co 507. Stra 53. Bro & Co 507. 3 Co 44. 52. Exp Dig 611.

So a voluntary return of the escaper into custody on a negligent escape before action brought agt the shff discharges the shff 2 R 126. Comm w. 254. 1 B & P 413.

But in the case of voluntary escape recaption before suit brought is no discharge of the shff. for such recaption is void.

& also because a personal pledge once voluntarily relinquished is gone forever. so therefore a personal lien. — 3 Co 50. 6. Exp Dig 611. 12.

In case of voluntary escape too a voluntary return of the prisoner into custody before action brot will not discharge the shff. 2 Wilson 294. Lick 270. Exp Dig 612.

Feb 97. After action brot the shff in case of negligent escape may still retake the escaper.

If after a neg^t escape the shff in the process discharges the debt the jailor cannot retake him for his fees tho' if there had been no escape the jailor might have retained the debt until his fees are paid. Stra 905. Exp Dig 611. 607.

The reason is that the jailor is guilty of neglect. and by the escape the shffs lien is lost.

On a negligent escape by a person having the liberties of the prison-yard all these rules relating to negligent escape apply. 1 Root 106:7.

Yet in such a case the Shff may recover nominal damages agt the surety on the bond if indemnity tho' the party escaping is retaken or returns before any action brought agt the Shff before. For here is a bond given & the condition is broken. But this recovery is only of nominal damages. 1 Root 127.

(The Shff may ^{not} recover on his bond after his liability has determined by the St. f limitations (Root 128) But the Shff in such case where there is a bond is not compellable to receive the prisoner returning 1 Root 128.

He may do it however in his choice.

Under a count for voluntary escape the pif. may give in evidence of a negligent escape & this will support the declaration & the Deft. may plead any thing whl would be a good defence agt a negt escape. even witht traversing that the escape was voluntary 1 Ventri 211. 25. 2 126.

How then is the Pif to avail himself of the distinction between a voluntary & negt escape? The Pif must make a novel assignmet of a voluntary escape (sa St 1) Ventri 217. 2 Bac 248.

If the party suffering from a voluntary escape brings his suit agt the Def the Shff appears to be discharged. 3d Dig 412.

If after an action brought ag^t the sheriff & before pleadings the judge in favour of the Pl^t ag^t the party, making the sheriff may defeat the action ag^t himself by pleading "not till record" for the Pl^t cannot recover without a record.

But if after the judge & c^{ts} are rendered ag^t the sheriff the judge upon which the escape was made is reversed the judge ag^t the sheriff is still good & cannot be reversed. 8 Co 142 b. 442 209 3 mod 355. 325.

The sheriff would in this case however have relief by audita querela 8 Co 142 b. Bac Abr. au. quer.

2 Lev 81. A voluntary escape occasions the forfeiture of the office of the person suffering it and subjects him to punishment for a misdemeanor. 1 alk 271. 3 Lev 128.

By the common law it is the duty of the sheriff to furnish a jail for his county and therefore if a prisoner escapes thro' the insufficiency of the jail the sheriff is liable. 1 Roll 508. Stra 482. 5 Co 610.

rules

In this state it is the duty of the County to erect the jail & therefore when a prisoner escapes thro' the insufficiency of the jail the County & not the sheriff is liable. 1 Root 450 & count.

Only a nominal damage is given by the County to the person suffering from an escape thro' the insufficiency of the jail. 4 ind 318. 1 Root 155 158. 275. 307. 450. 555. 2 Root 30. - (vide 2 Root 196).

This mode of meeting the claim is merely an evasion of the rule. The remedy ag^t the County is by petition a memorial. appeal &c. from C^t to Sup^t C^t. If a sheriff makes a false return he is liable to an action on the case to the party injured by the false return. As if the sheriff returns a service when there is no return service the sheriff may sue him &c. 1 Milson 336. Exp^t Dy 615. Stra 600. 602.

Here if a shff makes a false return the
Deft may falsify that return on a plea of a batement

In most states & by the common law this
rule is diff. but a special action must be brought agt.
the shff for that purpose. "Pleadings" - So also if shff *Str* 650
makes return of non est inventus the Plf may sue the shff *Bro E* 729
for a false return. If a Cred: voluntarily discharges a *Exe Dig* 616
person arrested on final judgment whether committed or
not he cannot afterwards recover agt the party thus
discharged. *4 Bun* 2412 *Str* 653. *5 D & R* 123.
7 D & R 420. *6 D & R* 525. *17 C* 557.

If the Plf in *ex* discharges the Deft in custody
on a under arrest on a new promise or bond by the Deft *4 Bun* 2482
to pay the debt & the promise is broken the rule is *7 D & R* 420
the same but he may sue him on the new promise or *5 D & R* 123.
bond. that however is the Cred: & s' only remedy *15 D* 557
2 East 243 (*Ab*) *6 D & R* 525.

And if the new security should be defeated *Str* 653.
for any want of legal requisites the rule is still *Chanc* *Bills* 132
the same & the Cr loses his debt entirely.
17 D 557. *6 D & R* 525.

And if a plf in an *ex* discharges the
Deft on a bond that the Deft will surrender himself
in *ex* on a future day this bond is void. It
has been before said that If the shff so does that
bond is void. For the bond in both cases is
that the Deft shall be falsely imprisoned.

2 East 243 *1 B & P* 242

Our Ct's formerly decided that such a bond was good but
it is somewhat doubtful what the rule would now be in
this state — *2 Root* 133

If two joint debtors are taken on an
 ex^r the discharge of one of them ^{by the creditor} is a discharge
 of both from the whole debt. & if he is retained
 he may maintain false imprison^t or have habeas corpus
 1 Fonb 93. Salk 574. Ld Rayd 690 bro 6551

It was formerly decided that if a sole debt^r
 died in prison the debt was forever ^{extinguished} discharged
 Hob 52. bro 850. bro Jac 136. 143.

It is now however declared to be by
 21 Jac 1. ^{as the goods for} that in this case the Plt may sue out
 a new writ as if there had been no ~~total~~ ^{total} prison^t
 (2 Bro 354. Kib 153) pria execution
 This is declaratory not remedial.

If one of two joint debtors die in prison
 it was always held that the other debtor was not
 discharged 5 Co 86. bro 852. bro Jac 136. 140

There is a class of bonds taken by sh^{ff}s if
 then prisoners commonly called bonds of ease &
parone wh^{ch} are declared void by St: 26 Henry 6.
 or 23 Henry 6. This bond is given on admitting
 the prisoner to the liberty and is always a penal
bond — of bond that the debt shall remain
 true prisoner till the debt bond & fees are paid is by
 this it declared absolutely void. & void in toto.

1 Hen 237. 1 Pow^t on bon 173. 12 mod 683
 2 Milson 357. 10 Co 100 b.

This it has been adopted in this state
 & extends only to penal bonds. But the sh^{ff} may
 take a penal bond that the debt shall remain true
 prisoner till the ext is paid. but not until bond is
 is paid. On Sept 6. have determined, that
 (Root 158) the bond is void only quoad the bond & fees.

At common law all prisoners committed are to maintain themselves except felons attainted - 1 mod. 132 12. 1683

Prison Ex. for a felon attainted forfeits all his property.

By our St. law a person committed to prison for any offence is to ^{pay} ~~keep~~ all expenses of conveying him to gaol, maintenance &c. ~~of the gaol~~ but they are regularly p^d in the first instance out of the town county or state treasury. But the state has its remedy against the prisoner. It is ~~to be~~ ^{to be} ~~by~~ ^{by} detaining the prisoner until he pays these expenses, but the Atty for the state with the advice may discharge from prison on taking prisoners note &c. ~~for~~ ^{for} Gaol, 58. ~~where a person is committed for any such cause he must bear his own expenses unless he will take the poor prisoners oath, which is that he swears that they have not on earth sixteen shillings or not enough to pay the debt & that he has not disposed that tit of his property to defraud his creditors. If he takes this oath Gaol, 515. he is to be discharged unless the Cr will maintain him. But he is not of course entitled to this oath the Cr must be summoned to show cause why the oath should not be administered - the magistrate releases the prisoner not entitled to the oath he need not administer it. 1 Root 58. It Cr. Til fails.~~

If the magst first applied to refuse to administer the oath the debt may ^{make another appⁿ in nature of an appeal to a justice} appeal to the ~~two~~ ^{two} magistrates. ~~And a change of circumstances may make it proper to a justice~~ & the Cr may appeal in the same manner. ~~if the magst Gaol, 517. 18. does administer -~~ If the Cr does maintain the debtor in prison ~~the debt~~ ^{the debt} cannot afterwards obtain his discharge Gaol, 519 ~~by paying the judge's debt but must pay for the maintenance also. (and a new ex^{te} may be granted against the prisoner for the maintenance if he is discharged by the creditor.)~~ Where the county is destitute of a jail a prisoner or any person liable to imprisonment may be committed to the jail of an adjoining county.

The St of County is very similar to the law adopted by congress as to debtors suits in the federal courts.

(56)

On the trial whether the deft is entitled to take the oath the deft is made by Stat a competent witness, and the creditor has a right to discontinue under oath from the debtor, and in the latter case if the debtor refuses to be examined the ~~prisoner's~~ prisoner's oath must be refused - & then rules prevail both in regard to the trial before the Justice but on review.
Stat tit facts addition in 1828 -

Formerly after the administration of the oath the creditor by leaving money for the support of the prisoner could keep him in prison as long as he pleased but by Stat of 1831 the law on this subject is materially changed.

Duty of Sheriff in serving process

1st if the process is by summons merely service is to be made by reading in Deft's hearing or by leaving ~~with him~~ at his usual place of abode an attested copy of the writ &c

The copy must be substantially correct & not materially variant from the original. If it be materially variant the service is bad & the writ will abate if the Deft pleads in abatement

2^o If the process be by attachment it is the duty of the Sheriff to take the personal property of the Deft if suff^t can be found. If suff^t cannot be found then the body or real estate may be taken.

The object of the attachment is, to secure property, or the person of the Deft to answer the demand and tho' the writ is defectively served so as not to hold the property & still if served in such a manner as would be a good service if it was a summons the Deft will be held to trial & cannot plead the defect in abatement.

The body & property cannot be both taken on the same attachment, but after taking the body, if the Sheriff finds goods it is his duty to release the body & take the property so I suppose if the Sheriff commences the attachment of property & finds that he cannot lay hold of suff^t property he may release the property & take the body.

Where property is attached by the Sheriff he must leave an attested copy of the writ & of his return describing the estate attached with the Deft or at his usual place of abode.

And where real estate is attached a like copy at the Town Clerk's office of the town in which the lands lie,

If the Deft is not an inhabitant of the State the copy is to be left with his agent or atty if he has any & if he has not then with him who has charge or possession of the estate attached.

It is the duty of the Sheriff on attaching personal property to remove it within a reasonable time from the possession of the Deft & to take it into his own custody. If not removed within a ^{date} ~~time~~ left in the custody of the Deft reasonable time, other creditors may attach it or the Debtor may make a valid sale of it to a bona fide purchaser & perhaps even the attachment with removal would be nothing between the Sheriff & Deft.

The Sheriff usually delivers the property attached to some friend of the Deft who takes it as bailor of the Sheriff to keep it & gives to the Sheriff a receipt for the property. The bailor is hence usually called Receiptsman. The Sheriff is not bound thus to commit the property to a receiptsman he may keep it himself to be forthcoming to answer the execution which the Deft may obtain.

The engagement of the receiptsman is usually to deliver the property attached to the Sheriff on demand demand is however seldom made until the ex^r is issued then it is made & if the property is delivered it is taken on the Ex^r & sold at the post & the proceeds applied in paym^t of the debt.

If the Plf fails in recovering judg^t the property attached immediately reverts in the original owner & It is the duty of the Officer & of the receiptman to deliver it back to him.

But if the Plf recovers, the property continues sequestered for the space of 60 days after judg^t and if the property cont^d in the hands of the Off who attached it & the ex^r within the 60 days is given to him he levies on the property & sells & if the ex^r is handed to a diff^t Officer the latter Off^r demands it of the former Officer & if it is d^d in conformity with the dem^t it is levied on & sold, if the officer who has the prop^y refuses to deliver it he is liable to a proper action. If within 60 days no ex^r is given to the off who attached & no dem^t made of him the property is deserted of the levy & is to be d^d back to the debtor. So if the property is receipted & no demand is made on the receiptman within 60 days after judg^t the property is deserted of the levy. If demand is made of the Receiptman & he refuses to deliver the Shff is liable for the non production of the property to the creditor & the receiptman liable to the Shff.

If the property attached is lost or destroyed in the hands of the Off^r or Receiptman without any fault they are not liable, they are bound to ordinary care but are not insurers of the property.

The lien on real property is lost unless the off
 leave his Exⁿ within 4 months after obtaining
 judgment.

Certain property, as necessary household furniture,
 one cow &c, is exempt from attachment & from Exⁿ.
 If the off attach & take away property exempt he
 is liable to an action in favor of the person
 whose exempt property is taken. The action
 may it seem be trespass.

The interest of the debt in an incorporate
 company may be attached.

But choses in action are not liable to
 attachment, except that where debtor abroad,
 & where his body is not liable to arrest then
 by process of foreign attachment, then who owe
 a debtor may be compelled to pay over what
 they owe to the creditor of the debtor.

After serving a writ the off must endorse
 his proceedings on the writ & return the writ
 with his endorsement to the Court to which
 the writ is returnable.

His endorsement is prima facie evidence of
 the facts stated in it on the ordinary principles
 of evidence it being a certificate of his proceedings
 as a public officer, made by the requirements of
 law.

In Engl^d the endorsement is in general conclusive evidence of the facts stated, ~~pro~~ Conn^t. It may be contradicted

And both here & in Engl^d If the return be false, an action will lie by the party injured whether creditor or debtor for the false return—

(92)

(64)

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Bailments

A bailment is a delivery of goods on a contract
express or implied that they shall be restored
to the bailor or disposed of according to his
direction when the purpose for which they
were delivered shall have been answered,
or delivery for safe keeping &c. &c.
Jones 48. 12 R 451. 12 Lick 42, 60 & 612.

Every bailment vests a qualified property
in the bailee & by 172 Jones 112, Doct & it
129. 1 R 1451.

It is so by law that a bailee is
distinguished from all other bailees because
he has a property or interest in the goods
bailed but in this respect there is no
distinction between a bailee & any other
bailee every bailee has a lawful
possession & the right of possession - a
right which the law will protect & not
all the world except the bailor the
bailee is the owner. 4 Co. 89. 12 Lick 42.
Jones 112, 172, Doct & it 129. 7 R 342,
347. 4 Stra 505. The bailee is distinguished from
the nature of the contract has a higher
interest than any other bailee.

(95)

Bailments, Genl Rule concerning the bailor's liability
The bailor is not liable for any loss or damage to the goods bailed without any fault on his part. This is a genl rule but not universal.

But to determine when the bailor is in fault the nature of the bailment & the quality of the property bailed as well as the conduct of the bailee are to be considered & the principal object of inquiry is to ascertain the requisite care & diligence which in each case the bailor ought to exercise.

The bailor under a simple acceptance is to keep & use the goods with a degree of care proportioned to the nature of the bailment. In some cases the diligence required of a bailor is greater than in ordinary cases, in other less than ordinary cases — the acceptance is genl when the bailor enters into no special agreement as to the care which he will use. When he does agree concerning the care the special agreement determines the care which is to be used & the law is silent on the subject.

(Definitions.)

Ordinary diligence is that which every prudent man uses in the case of his own goods or in the management of his own concerns. But the degree of diligence on either side (Jones 9. 10. of this standard have no technical name in the civil law the Latin has language appropriate to each degree of care.

In every degree of care there is a corresponding degree of neglect and the omission of ordinary care is ordinary neglect. The omission of that care which prudent & vigilant persons use is called gross neglect & the omission of that care which inattentive persons take is more than ordinary neglect. Jones 13. 60. 1. This last degree of neglect is usually called gross neglect & they by considered as evidence of fraud in the law, at least it is prima facie evidence of fraud, So Raym 915. Jones 13. 60. 64. But if the bailee uses his own goods of a similar kind in the same way this rebutts the presumption of fraud.

Genl Rules concerning the degree of care required,
Bailment, to apply the genl rule that the law
 requires the diligence proportioned to the
 nature of the bailment.

If the bailment is for the benefit of the
 bailor only under a gentl acceptance
 nothing more than good faith is required
 of the bailee. he is not liable even for
 gross neglect where the circumstances
 exclude the presumption of fraud.
 Qui sentit commodum sentire debet
 onus / Douc 247. 20 Rym 915. Jones 15.
 10. 21: 2. 32. 51. 55. 14: 5. 101: 2. In 40087
 So Coke says that the bailee in this case
 must keep the goods at his peril. but this
 is clearly not law.

When the bailee is the only person benefited
 by the bailment he is liable for slight
 neglect. Jones 15: 0. 23. 33. 19. 90: 1.

Where the bailment is reciprocally
 beneficial to each both parties
 partake of the risk & the bailee is
 bound to use ordinary care merely.
 he is liable only for ordinary neglect,
 or for gross neglect. Jones 14: 22, 32: 3.
 101. 105.

Division of Bailments,

Bailments are of 3 kinds. the law has made these 3 kinds, it is not the most logical division however, Neither is Sir Wm's division perfectly logical. II depositum a delivery of goods to be kept by the bailee with reward for the sole benefit of the bailor, 20 Ray 412 113. Bull 72, Jones 551.

III Commodatum, lending this is a gratuitous loan of goods with adm^t of being used for use & for the sole benefit of the bailee, bailee is here called lender, the bailor borrower, 20 Ray 413:5. Jones 50. 89.

This is distinct from a mutuum, a mutuum is indeed a loan & in fact a gratuitous loan but it is a loan not for use but for consumption to be repaid in articles of the same kind but not to be specifically restored. In case of mutuum the whole property is vested in the borrower by the delivery a mutuum therefore is plainly a bailment.

D 4129
Jones 89:40

III II, Locatio & conductio letting & hiring 20 Ray 417 this is a delivery of goods to the bailee to be used, for a certain reward to be paid by the hirer, Jones 50 119

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Bailments. Definitions

IV. Delivery of goods as a security for some debt or duty due from the bailor to the bailee.

104

Bull 72

(16)

V. Delivery of goods to be carried or about which some act is to be done by the bailee for a reward to be paid by the bailor. This includes delivery of goods to a common or special carrier, to a mechanic, to commercial agents &c.

VI. Delivery of goods as in the last case with reward by the bailor to the bailee. Pons C 254:5. Jones 73. Le Ray 913:3.

The bailee in this case is called a mandatary & the bailment is called a mandate in Latin mandatum.

Liability of Depository

II. Depositum, or delivery of goods to be kept by the bailee with reward, —

Now the delivery is advantageous only to the bailor & the bailee is liable only for gross neglect at most. Doct & St 129. Bull et Dy 102, 64. 5. 102, 1 HBL 153. Doct & St 109. 13. Stra 581. 1094.

The depository is liable for gross neglect only 2 BL C 462 as this is evidence of fraud, Jones 13. 30.

In some books it is laid down that 64. the bailee here is excused by a discreet man Stra 581 1 Don 247. 20 Raym 913. but by a discreet man here nothing distinction is meant he is not liable for less than ordinary care unless there is gross neglect.

And the depository is not always liable for the grossest neglect & indeed he is not liable for gross neglect in the abstract at all he is liable only for fraud tho' gross neglect may be evidence of fraud, & is always prima facie. If then the depository treats his own goods of the same kind with the same neglect as he has treated the goods of the bailor he is not liable for the most gross neglect for here the presumption of fraud is rebutted 20 Raym 914. 5. Stra 1094 1 Don 248. 4 Burr 2300.

As the bailment is all advantageous to the bailor the bailee is not bound to use any care —

Bailment, Depositum, Southcoles case, Delivery, a consⁿ
 22 Ramm By a special acceptance the depository
 911:13.655 may bind himself to an extent - the plea
 3 Rer He & subject rules presuppose that there is no
 245:1.374 special agreement

410:136 The older opinions are that the depository
 120:115 is in all cases bound to keep the goods
 10:116 at his peril

In Southcoles case the deⁿ stated that
 the deⁿ rec^d the Pl's goods & promised
 to keep them safely the deⁿ pleaded
 that the goods were stolen the deⁿ consid-
 ered the case as it stood on the face of
 the deⁿ & on the face of the deⁿ the deⁿ
 had made the special acceptance which
 bound him to keep the goods safely at
 all events. but no Coke's doctrine is wrong
 the case was rightly decided.
 22 Ramm 655. 911:13.655. 913:14. 1099.
 Com. h R 133. 135. Bull 72. 1099. Besides
 the plea did not deny his own negligence
 consistently with the plea the goods might
 have been stolen by his accomplices

Formerly held that if one undertook to
 131:241 keep the goods of another for reward the
 Deⁿ deⁿ was bound but that if the
 1129 bailment was with consideration
 10 Ramm 909 the bailee was not bound to keep the
 919! goods at all but now it is settled that
 110:140 the delivery is a sufficient consideration to
 3 R 400 140 sufficient a special acceptance of goods
 374. or to make him liable under a general
 acceptance

Depositum

Again it has been held that if goods are left with a depository in a chest of which the bailor has the key the depository is ^{Co Litt 39a} liable for the loss alone & not for the contents goods, but at the time of Leake's Bailment 1 Bac 237 was not at all understood, this doctrine is now denied Le Raym 914. —

The circumstance of the bailor's knowing the contents of the box must however make much difference with the liability of the bailee, It seems as ^{Jones 514} if it was the duty of the bailor to inform the bailee of the value of the goods in the box, a degree of care which would not amount to gross neglect if the goods were of trifling value might amount to gross neglect if the goods were valuable. The bailee's neglect must be measured by the bailee's supposition & belief concerning the contents. —

If the bailee expressly undertakes to keep the goods safely this gen'l undertaking is not an insurance of the goods against the acts of God or of violence which the bailee ^{Le Raym 915} cannot resist. indeed this undertaking means no more than that the bailee ^{Diet 1130} will take all care & use all diligence, ^{1 Pale 248.}

The construction is analogous to the covenant for quiet enjoyment. He may indeed make himself an insurer against all accidents, but the gen'l language used above does not make him such insurer —

(106)

Tailments: Depositum,

4 Co 53
Jones 2:3
It seems however that in the case of
the joint undertaking above the bailor
would be liable in case of clandestine
theft for ordinary care can certainly
secure in joint not clandestine theft
- the joint undertaking to keep safely is
imposed to bind to at least ordinary care.

12 R 31
3 Co R 1
5 Co 10.
14231.
10. 1470.
2 R 104.
11 East 52
1 Selw 48
5 Co R 18.
Suppose the goods are distrained by
the bailor of the depositum & the
depositor liable & if so in what form
of action,

Borrower liable for slight neglect.

II commodatum, a gratuitous loan of goods which admit of use to be used by the bailee & restored to the lender. Here the bailment is for the benefit of the bailee only. Hence the bailee is bound to more than ordinary care & is liable for slight or the least neglect which occasions a loss. Bull 72. Jones 91. 20 Ragn 46. 1 Pol & 249. 250.

If I lend a horse to B & B puts the horse into a stable which is unlocked & the horse is stolen B is liable. but this must depend on the place & the probability of his being stolen. He is indeed bound to more than ordinary care but in court it will be more than extraordinary care to keep a horse in a locked stable. 20 Ragn 46. 1 Pol & 250.

If borrower however it is agreed is not liable for a loss occasioned by force which he could not resist unless he unnecessarily exposed the property to the danger. 20 Ragn 46. 1 Pol & 251.

Bailments. Commodatum.

in guilt he is liable for theft (clandestine) unless he can prove that he used more than ordinary care to prevent theft. Jones (12) 42.

But a borrower may subject himself to a loss occasioned by inevitable accident if of the borrower's ^{own negligence} the horse into a situation in which he is exposed to the hazard of inevitable accident. The proper mode of expressing the rule is that he is not prima facie liable for loss by inevitable facts.

He is not in guilt liable for loss occasioned by inevitable accident, but by previous breach of trust he may make himself liable for any & every accident. If of borrower's horse for one journey & takes another he is liable for all losses & costs.

Raym 415. 1 Popham 244. 50. Jones 450. This rule applies to all bailments, whatever incurred from the moment of the breach of trust the bailor may be sued in trover or some proper action. He is no longer a bailor & cannot take the benefit of that character.

Go Rags 417
Croft 244
1 Popham 253
1 Mac 237.8

Jones 45

again borrower or any bailor may subject himself for inevitable accident if previous rashness. —

Locatio et conductio, letting & hiring, In this case as in all others the bailor acquires a qualified property & the bailor is entitled to a stipend, the bailment is mutually beneficial & according to the *Le Ray* 916
 1 *Poult* 251
 1 *Balk* 72
 1 *Poult* 10 was used unadvisedly
Jones 14: 120-3. 1 *Sw* D 389: 90.

Bailment of personal property as security for some debt or engagement.

Vadium, pledge, 1 *St* 136 114. *Le Ray* 913. If the seller has a right to purchase back the article sold the transaction is a *pawn* 1 *St* 136 114.
Exp D 274. This contract being beneficial to the pawnee by securing his debt & to the pawner by prolonging his credit, the bailor therefore on principle must use ordinary care *Le Ray* 917. *Talk* 523. 1 *Poult* 252. In Southcot's case it is said that he is bound to keep the goods only as his own, because *Co Litt* 89a says so & Coke he has a property in them. But *Co* 54 Every bailor has a special property & the pawnee has no more. *Jones* 105. 115.

The liability of a pawnee then is precisely like that of a hirer, He is then *prima facie* excused for a robbery. *Le Ray* 917 *Talk* 722. *Jones* Cl. 107. 109. 111.

Liability of Pawnor, effect of receipt &c
 In the notes case it is said that the
 pawnor is not liable for a loss occasioned
 by theft but even a depositary
 may be liable for a loss by theft
 op. 502 & 5.

In the Jones again held unconditionally
 that if the goods are stolen the pawnor
 is always liable Jones 106. 7. 61. for he
 says ordinary diligence can always guard
 against theft.

I think in case of theft the pawnor is
 liable if in point of fact he did not
 use ordinary care & the question whether
 he used ordinary care is like every other
 fact to be proved & tried by the jury.
 See Ray 418. 1 Vent 121. Salk 522 &c.

The pawnor acquiring a special interest but
 his interest is determined by payment or
 tender of payment on the day appointed
 & at that time the property is completely vested
 in the pawnor, i.e. § 244. Jones III.
 Buller P 72, 4 Co 53 (b) Feb 1796.

Hence if after payment & tender on the day
 & demand the pawnor retains he is from
 that moment a wrong doer & will be
 liable for any loss whatever, 4 Co 53 (b)
 Salk 52's Exp 1625. See Ray 417. 1 Pw 253.
 1 Sw 239.

The pawnor is also immediately on such tender to liable in detinue, trover, or assumpsit at the election of the pawnee. 1 Rol 66
 in assumpsit because the refusal is a breach of the implied contract. Jones 111
 1 Bos 237; 8 Bull 72.

By a breach of trust all bailors become liable not only to all losses but to an action adapted to the nature of the case.

And a refusal to deliver the pledge by the pawnee's authorized servant or agent is the same as a refusal by the master, Ex merchant's clerk, Cro J, Saik 441.
 Jones 126. Bull 72.

And if one pawns property to secure an usurious debt he cannot recover the pledge until he has tendered the principal & lawful interest. The principle is that the actions of trover and assumpsit are equitable actions and an equitable defence is good but if detinue were brought the pawnee could be recovered without such tender. 12 R 153

Section, When pledge may be used?

Refusal to deliver a pledge on payment
Salk 522 a tender of the debt is a crime, this
3 Do 309 is an exception to the general rule that
conversion a breach of trust is no crime,
4th 258.

caith 277 the rule seems to be founded on
2 Hawk 240 policy to protect the pawnor from
1 Bac 240 oppression & the transaction is generally
a secret one,

In some cases the pawnor may use the
pledge in other not (in the absence of
any agreement on the subject). Where
there is no express agreement the right to
use is founded on the presumed assent
of the pawnor. The presumption of the
pawnor's consent is said to exist or not
as the pledge is like to be made better
or worse or not at all affected by the
use. When the pledge would be better for
use the law presumes a consent that
the pawnor may use &c. So if the pledge
will not be injured by use it is said
that the pawnor may use them &c.
trinkets &c. In this case however the
pawnor uses them at his peril & if they
are lost while in use the pawnor will
be liable even in case of robbery but
not in case of inevitable accident

Salk 522

Bull 17

Jones 113

2 Do 497

2 Do 59

1 Do 2390.

Bailments, c. 22 Use of prop^y pawned.Vadium

Again if the pawnee is at expense in keeping the pledge the pawner may use it by the way of reimbursement. Ex if a horse or a yoke of oxen are pawned & in this case I think that the use is not extend his liability at all for here the right to use is matter of justice not of indulgence —

2 Lick 522
25 Ray 916.
Expt 625.
Jones 114.
Buller 72.
1 Sw 390.

But the pawner does not seem to be obliged to account for any benefits derived from the use of the pawn. Jones 115. the civil law is otherwise —

But if the property would be a use for use and (will not be if expense to the pawner) the law gives no licence to the pawnee to use the property. Ex clothes pawned. 25 Raym 917. Jones 113. Bull 72. And in this and in similar cases the use of the property is a breach of trust and trover will lie & he is liable for all accidents — 5 Bac 257 'trover' He is liable in trover even tho' the debt is not satisfied & tho' the day of payment has not arrived.

(114)

Pawns - Goods found,

The law as to pawns Le Fort says applies to goods found. By this is meant that the finder is bound to use the same diligence as a pawnbroker is bound to use. But it is said that a finder is not bound to keep the goods safe and that he is not liable for negligent keeping, Cro E 219. Cro E 599 1 Leon 123 1 Bac 247. But this is not law.

Mr. Pow. says the law implies a contract to use ordinary care, in the case of a deponent, the owner selects his man in the case of a finder not so. the goods are taken without consent of the owner the finder volunteers & if he volunteers he ought to be bound to ordinary care, 2 Barn 2857.

In Count our Stat law has made an express provision for a compensation to the finder in Count, therefore the law is therefore beneficial to both & here of course ordinary care must be used.

{ 2 Bult 21 The doctrine in Cro E 219 is a mere
{ 1 Leon 123 dictum & is wholly indefensible, the
{ Cro E 599 decision in Cro E was with doubt right for
1 Bac 243 there was no doubt & there will not be for
new negligence 2 Bult 251. 5 Co 146. 5 Bac 269.

Pawns, Goods found

A finder of goods at common law has no claim on them for his expense & trouble. His expense & trouble is a voluntary courtesy. 2 HBl 254. 2 Bl R 1117. 11tra 551

If then the owner proves property & demands the goods & the finder refuses to deliver them lies. — And there seems to be no way in which the finder can recover compensation. As to property found as wreck the rule is diff. the person who saves a wreck or an abandoned ship &c is entitled to a compensation, by the law maritime & may retain the property until compensation is made. — 2 Co 6106
Exp D 17:95
2 HBl 254
Lo Raym 293
57 Bae 270.

A refusal by the finder to deliver goods to the owner is not a conversion unless he is furnished with reasonable evidence of property. 2 Bl R 312. Exp D 590. — In each case the jury must judge whether the evidence was reasonable.

In Conant A found the goods of B. & presented himself & claimed them as his. A refused to deliver them & sued A in trover & recovered. B then the real owner claimed the goods & lost trover. It was held by the sup. Ct. that B was entitled to recover. 35 R 125. 1 HBl 619.
Draught 161. 2 HBl 408. Story's Bailm. 5105.

If perishable goods being pledged decay the
pawner is still entitled to his debt. 3 Lev 179.
1 Atk 523. Co Litt 209. 1 Bac 238. - And while
the pledge remains unimpaired in the hands
of the pawnee he may sue for his debt &
redeem unless there was a special agreement
to the contrary, even if the pawn decays
by the neglect of the pawnee. He can still
sue for the debt tho' he m^y be liable for
the neglect. - Rule the same in case of
ransom bills, 3 Burr 1734. Dory 619. 1 BRR 563.
If the debt secured by a pawn is not paid
at the day appointed for payment the whole
property in the pawn is vested at law in the
pawnee Co Litt 205. 3 Atk 395. 2 Vern Eq. 8.
1 Bac 238 in Equity however the pawner may redeem after
non-payment on the day. as in case of mortgage
- the rule once a pawn always a pawn holds 2 Vern,
But this right of redemption in Equity exists
I trust only where the pawn remains in the
hands of the pawnee or where the pawnee's
lien only is assigned for the pawner has
a right to sell on non payment on the day.
Christian Observer 22 vol p 176.

Pawns: pawn at 12 months

After the day of pawn^t has elapsed with-
out paym^t a tender the pawnee acquires the
right of selling absolutely, but ^{not until} after
12 mos + one day + then the excess of money
rec^d after the over the debt interest + expenses
must be refunded to the pawnor.

22 Vol Ch 16 p 176. Co Litt 205.

*i.e. where no day of pawn^t is fixed, it seems that
after 12 mos + a day have elapsed the pawnee may
sell at law in pawn^t diff^r vide post

It is said that the pawnor before the day
of paym^t ^{may} assign his right + transfer with
his lien to his creditor the right of holding
the pledge 1 Bulst 29. 31. 1 Bac 239. Owen 124.
arg^d 1 Ves 250. But I do not take this doctrine
not to be law. Even bailment is a
fiduciary contract & every lien on personal
property is personal + cannot be assigned
more than the master's right in his appren-
tice can be assigned. I may be willing to
entrust my property to one & not to another
see 178. Cro J 244. 7 East 6. 5 R 606.

Judge Gould thinks that the assignment
in such case is a breach of trust in the pawnor
& a man may forfeit by his crimes whatever
he can transfer by his contract. Co Litt 5.
1 Bac 238. 12 Co 12 Cro C 556.

and yet a man cannot forfeit by his
crimes a pawn^t is before the day of paym^t

1 Ves 359. 1 Bac 238.

If he can assign he may assign to a
villain wholly unworthy of trust.

Pawns. Not a signature.

It made a pawn to B. B. before the day of
paym^t pawned it to C, & brot his bill
agt^t C and the Ct held that it could not
redeem with paying to C. C's debt to B &
B's debt to C, but in this case no tender
or paym^t was made on the day if it
had been a Ct of Equity & not have
entertained the bill^d; then it made no
difference with it that the assignment was
before the day of paym^t.

again another analogy neither the pawn
itself nor the pawners interest in it can
be taken in Ex^{ty} nor if the pawners interest
cannot be transferred by law it cannot be
by the act of the party
1 Bac 238. 152. Dyer 67th Owen 124.

again the pawn may forfeit his interest
by his crimes Feb-179. 1 Buls 24. 1 Bac 238.

From these authorities I think that the
conclusion is inevitable.

If pawn is assigned with consent^u tender
must be made to the pawnor & to the
cred^r 1445. Feb-178.9. 1 Bac 238.

Pawns. Redemption.

It was once deemed essential to a pawn that the deliver was at the time of the creation of the debt, but, this rule is now different. Yelv 104. 2 Leon. 30.

1 Bac 231. 1 Ves 350. 9.

Formerly doubted when no day of paymt was appointed by the contract whether lender a paymt after the death of either party or at law, vest the property in the pawn.

Now however held that the pawnor may redeem any time during his own life (provided it is now held the pawnor does not demand the redemption sooner). 1 Cro J 244. Yelv 178. 1 Buls 29. 2 Co 79. 2 Raym 434. 11-2, 278. 2 Caine, 206. Yelv 179 a & notes.

But from the case reported in Ch Ob, 22 Vol 178 It seems that the pawnor in this case must redeem in 12 mos & on day or the pawnor may sell & pay over the excip. sed 214. This seems the reasonable rule.

The Ex'r then according to the rule can in no case at law redeem. 1 Buls 29.

Cro J 244. Yelv 178: 9. See in Ch 420. — (i.e. where no time of paymt is appointed)

But in Equity the Ex'r in such case may redeem. 1 Bac 446 239(n). unless the pawn has been sold ante.

Common & Special carriers.

where a day of payment is fixed in the contract it is clear that the ship may redeem on the day in case of the payment, death or loss the day. 1 Bul. 29. 1 Bar 234

If delivery of goods to be carried or not and something is to be done for the doing of which the bailee is to receive a reward

then is a carrier may be to a common carrier or other person acting in the exercise of some public employment or to a person in his private capacity,

§ 344 of delivery to a private person as such for 1849 includes a delivery to a trayla factor § 344. auctioneer broker special carrier to to an agisting farmer trayla factor

See the bailee being mutually benefit the law requiring a delivery and § 344 of the law § 344. 120. 121. 122. 123. 124. 125. 126. 127. 128. 129. 130. 131. 132. 133. 134. 135.

Special carriers to

In case of robbery bailies of this class
are generally excused, & always prima facie
so. The notion here supposed is, one in
whh face is employed, whh the bailie
cannot resist, & whh he has not voluntarily
exposed the property to.

Jones 129.
130.8.
Co Litt 89
Holt 151.
4 Co 84(a)
Le Raym 911.

In case of loss by theft the rule is if the
propy was locked up or kept with ordinary
care the bailie is excused Jones 131. Went 141.
Le Raym 918. 2 Cor 5. 214. nnnnnnn

According to Sir Wm if silver is delivered to a smith
to be wrought into a vessel the loss of the silver
is the loss of the smith. Jones 89. This opinion
appears to be founded on the principle that
the property is to be so much altered that the
article originally identified delivered cannot
be identified as in case of wheat converted
into flour, grapes into wine &c 2 Bc 404. Polk 38.
For these reasons Sir Wm concludes that it
could not be the intention of the parties
that the same silver sh^d be specifically
restored in the form agreed upon,

2 Kent C
580
19 John 94.

But I think that if the silver delivered remains
specifically separate from the other funds of
the smith & a loss sh^d happen that the
Owner must bear the loss when it was lost
with the negligence of the smith,

Special carrier for "Skill"

Where property is delivered to one whose profession is to labour on such article for the purpose of having such labour done for him the law implies a contract not only for ordinary care but for skill.

1 H Bl 151. Jones No 9. 14 Bl 1. 11 Co 54 a 3 Bl 105.
1 Brand 324. Esp & C. "Skill in the case"

Ex horse d^r to be shod & cloth to a taylor to be made up. - or by proposing a trade the bailie holds himself out to the world as skilful, according to Jones the ordinary care required here & elsewhere does not oblige the carrier to insure against fire, but wage must decide in such cases, & the quality &c of the thing bailed. Ex commission merchant in certain cases must perhaps be insured.

3 Bunk 172 - If goods d^r to any of the fifth class are lost or destroyed by the bailie's neglect while the work remains unfinished it has been a question whether he can charge the bailor with the work. But the bailor has not been benefited by the work of the wason who is not benefited is the fault of the bailor.

• Common carrier, Who are considered as common carriers,
 is any person in genl who makes it his
 employment to transport the goods of others
 from place to place for hire -
 stage drivers who are accustomed to carry
 goods for reward 1 Sw D 390.

Lo Raym 918.
 4 C. 114.
 Cro O 330.
 4 C. 18.
 15 R 27.
 Esp D 614.
 1 Sw D 390.

Formerly doubted whether any other than
 a carrier by land was to be deemed a
 common carrier, 4 C. 17. 18 Cro. 330. Jones 149. 51.
 12 M. d. 487. The law was first extended to
 H. of mail in the time of James I. & to ship
 masters in Chs 24.

Ray 220
 Lo Ray 911
 Jones 152
 1 Vent 190
 238

2 ex 69
 Esp D 627
 1 C. 1440.
 15 R 18. 78.

Ship owners where the ship is employed in
 carrying goods for hire are also liable
 as com. carriers, and in case of loss the
 action may be bro't agt the owners or agt
 the master. By law much master's liability is
 There is an English st on this subject
 7 Geo. 2. 26 Geo. 3. the effect of these staty
 is to limit the liability of the owner in
 certain cases to the value of the ship &
 freight. We have no such stat. t.

3 Lev 259
 1 C. 18. 78.
 1 R 18. 78.
 1 Marsh 160.

ReimburseCommon Carriers

of com. carrier by becoming such impleader
undertakes to carry all goods, (to the extent of
his convenience) offered to him if the hire
is offered to him with the goods & if he
refuses he is liable in an action in the
case. Bull 70. 1 Bl 166. Card 163. 2 Thom 327.

4 Burr 224
2 P & 622

of com. carrier may make a special
acceptance, ie impose reasonable terms as
conditions of his acceptance. He may
make the condition that he will not be
answerable for silver gold &c unless he has
notice of the articles & receiving pdy for the
risk. If such conditions are imposed & not
complied with he may refuse to accept

The liability in case of com. carriers is
beneficial to both parties & according to
the genl principle he will be liable only
for ordinary neglect, & as this was found
the extent of his liability even to the time
of H & C Jones 144.

But his liability has been gradually extended
from principles of policy & the rule now is
that com. carrier is liable for all accidents
occasional otherwise than by the act of
God or public enemies & of the carrier
himself.

20 Hargr 11
3 Burr 1543.
Bull 70:1
2 Tra 128

1 East 609

17 R 27:14

1 Halk 18. 1 Wils 286. 1 Poulc 253. 1 Ld & 39.

Liability of common carrier.
 A com. carrier who carries goods gratuitously
 is not liable to the extent of the value of
 the goods. He is not then a com. carrier but a
 mandatory. Barth 415. Esp 462.

A common carrier is then in nature of an
 insurer against all accidents except those
 before mentioned.

Inevitable accident so defined, defining
 to be one which could not have happened
 by the intervention of man. Fire not,
 occasioned by lightning is not considered
 as inevitable accident. 2 H & L 113. 15 R 34
 Esp D 620. 15 R 33. Stra 128. 1 Sw & 391.

In conveyance by water the knowing of rats
 that the ship is not deemed inevitable.

1 Mch 281. Ball 70. Jones 141. 1 Sw & 391.

A com. carrier is not liable for the acts of
 public enemies & pirates are deemed
 public enemies but not so rebels or
 mobs neither are fresh water pirates
 public enemies. 1 Vent 239. 15 R 11. Esp D 620.
 1 Vent 190. 1 Col 85. 1 Sw & 391.

But if tempest or stress of weather so make
 it necessary to throw the goods of a
 freighter overboard the carrier is excused.
 12 Co 63. Esp 620. 2 Bui 280. 2 Rol 567.

Jones 151.

Trailment Common carriers

There is a case reported however where the master threw overboard a box of jewelry in which it was held that the master was not excused. 4 Allen 93. Jones 151.

The principle must have been that the throwing overboard of such a box was a careless act & could not have been of any service to the safety of the ship.

But in case of goods thrown overboard the owner master & freighters are liable to avellan, not so with passengers, East 226. 5 & R 407. Beanes Lexell 48. 3 Bac 594. 5. Mark 406.

If a carrier wantonly negligently & unreasonably exposes property to inevitable accident he is then liable. 1 Stra 128. 1 Conn & R 487. 10 & 391. 1 Conn & R 487. 81 & 620.

Again the carrier is excused for any loss occasioned by the act of the ladrin himself. as where he committed to B a cask of sack while it was in a state of fermentation. Hall 89. 74. 10 & 221. —

2 Thom 127
1 Bac 344.

If the carrier's wagon is full laden & the driver neglects or the carrier taking them & a loss happens. By this is meant that he here is not liable to the extent of the goods in the wagon. He will here be liable for the rest.

Liability of Common Carrier

But to subject the carrier to the extent of the rule the goods must have been in his possession & under his control. If then the carrier is on board the ship taking the charge of the goods (if he assumes the charge & manages the ship)

In 2392.
394
2B & 416

But if the carrier's negligence is the loss the carrier is liable not indeed as common carrier but for want of ordinary care. Ex & Int. Bull 70. Stra 690. 1 Bar 344. 2 Shaw 317.

The principle is that the goods are not deemed to be in the possession of the carrier. But if the carrier's negligence requires a passenger to have the oversight of the goods this does not at all discharge the common carrier. The driver does not amount to taking the goods out of the control of the ship.

Robt 2
Ex 330
451

It seems that the carrier is liable tho' he does not know the contents of a box unless he discharges himself by a special acceptance. In his liability does not depend on his neglect

2 East 120
Stra 145
ante 415
Bull 70

In one case the carrier was found negligent with respect to the value of the article & was held & was held liable. And in a similar case a box containing 500 of the same appearance, as a box of 1000 & on a loss the carrier was held liable

1 Wms 393,
Bull 70
451

But these cases are disapproved 4 Burr 2200. Stra 145. 1 East 610. Jones 145. and are wrong on principle & must be considered as founded. carrier is insured, the value affects the risk. in insurance the risk must not be concealed much less misrepresented.

Keb 3/135
Doct 1130

An unqualified Notice that the Master
will not be liable for baggage at all
cannot exempt him from all liability
He must I think be liable for his
own negligence. - Such Notices are common
in steam boats. A common carrier may
impose reasonable terms, private carriers
may I conclude impose any terms.

Bill of Lading (1893). Special acceptance

It is not necessary for Common Carrier

for the purpose of making a special acceptance that there shall be a formal communication between the carrier & owner. If the carrier by published his terms, the owner determines from the circumstances whether the carrier had notice of the terms. 4 Bar 229. Carth 485. 11 ad 71. Exp 5022. 82K 531. 126 BC 293. 300(u).

Under a genl acceptance except when fraud is practiced on the carrier he is liable to the (H) amt of the full value of the goods. But Carth 485 under a special acceptance the carrier if Exp 5021 not informed of the value will only be liable Bull 70:1 to the amt of the acceptance, as if carrier says the box contains \$500. & the carrier under the terms that he will not be answerable for money unless informed to, & the box containing \$1000 he is liable only for 500\$.

And a com. carrier may impose terms still 1.4 Bl 291 more strict viz that he will not be liable 4 East 371 for any part of money due to him unless he is 620 564 informed of the contents & of the precise amt of money contained. & here the carrier will not be liable at all. This is a reasonable condn

Common carrier,

The master of a stage coach who carries passengers for hire but who charges nothing for the baggage is not liable for the loss of the baggage, see note below. — This can mean no more than that he is not liable as a common carrier for the baggage. And even this rule thus qualified seems to be correct. The law in fact extends to the baggage. And such is the rule in case of any interper

A com. carrier is liable as such witht any express agreement to pay the hire for there is an implied agreement. 1 Bac 343

To charge a carrier it is not indispensable that the goods sh^d be lost in transitu. He is liable for a loss at the inn where he arrives if the custom is to deliver to the consignee & indeed, unless there be an established custom, that he is not bound to delivery. 2 Bl R 916. 7 3 Wils 424. Esp D 223. 1 Bac 345.

When the usage is not to deliver to the consignee but to keep the goods in the warehouse of the carrier, he ceases to be com. carrier, when he delivers the goods at the warehouse according to custom, but he may be liable if he receives any thing for storage for want of ordinary care, and if his storage is gratuitous, he seems to be liable only as depository, but it may be s^d that his compensation as carrier extends to storage.

Who sh^d sue the carrier in case of loss?

If the consignee directs by what carrier the
consigna shall send them the consignee is
the person who must sue the carrier for any
loss for as the consignee directs he is in
fact the bailor & the consigna acts
merely as agent. and here too as between
the consigna & the consignee the consigna
owns the goods & must bear any loss.

Comp 294
S.R. 330
Exp 576
Ball 35
1 Pon 343
353

But if the consigna elects the carrier the
consigna must sue the carrier

(So if the consigna makes himself liable by
agreement to pay the carrier) & assumes the
risk of the damage the consigna must
sue. S.R. 333 5 Bar 2080. 1st R 659.

+ See, vide opinion of Lawrence J in Dams & Peck & R 333
2 Comyn C 318: 19.

But if one sends an order for goods to be
sent by a com. carrier & the consigna sends
them by another com. carrier upon the proper
route the risk is here the risk of the
vender & the consignee must sue. If
the consigna makes a contract with the carrier
at supra. He may I trust sue on the contract
tho' he may not sue in trover.

3 B 458
Exp (42)

Common carriers,

It is said that when an action is brought against ship owner for loss of goods carried that the action must be against all but the true rule is if the owners are sued on the contract then must all be sued but if the action sounds in tort any or all or any of them may be sued for torts in joint & several. 1 Salk 440 esp 5 Cr 55 R 549, 651. 3 East 62, 70. The liability of the ship owner is founded on the fact that the master is the servant of the owner.

5 Bar 2611 But even in case of an action sounding in tort contract the owner sued cannot take
2614 advantage of the nonjoinder in any thing
57 R 657 but in assumpsit formerly otherwise
Salk 440.

At Ex p Pell was a com carrier & liable as such for at Ex he was a private undertaker he was not appointed by law until 12 Ch 2. But Pell is not now a com carrier. Jones 153. Salk 17. Comb 754. 764. — The Pell Gent is not liable at all for the delinquencies of Post Master's. but Post Masters are liable for their own negligence and perhaps for the negligence of their clerks & servants. 5 Bay 5463. 7 French 212.

The ancient books treat the liability of
a com. carrier as founded on the custom
of the realm, but this custom is merely
a rule of the common law. the allegation
of the custom of the realm is wholly
unnecessary the judge ex officio take
notice of the com. law.

15id 245
Haid 485.
Hob 18.
12 R 33.
3 All 227
Long 130

When property is stolen from a com. carrier
or otherwise lost or injured he being
guilty of no misfeasance a special
action on the case must be brought but
if he is guilty of a misfeasance trover
will lie, or a special action on the case
ex delicto or aumpsit, for a misfeasance
is a conversion. Talk 655. Esp & 590.
5 Burr 2827. & Co 146.

Inkeepers fall under the second branch of
of this fifth chap. Jones 130: 2. Esp & 625: 6.

Inn keepers.

Since the bailment is mutually advantageous and according to the general rule is to be liable only for ordinary neglect, but the police of the law has extended his liability Jones 133:4. 135:4. But his liability is not quite as extensive as that of com. carriers.

He is clearly liable for any loss occasioned by his servants ~~in and out of the inn~~,
Esp 5026. 8 Co 3213. 1 Bl 430.

Story 54170 If the goods of a guest are stolen by a stranger the innkeeper is liable whether he has used ordinary care or not
Cro 224. 8 Co 33(a). Cro 119. Jones 134.

But if the goods of a guest are stolen by his own servant or travelling companion the innkeeper is not liable & nor is he liable for a theft committed by any one who lodges in the same apartment by the request of the guest. Cro 285. 8 Co 33(a).
Cro 285. Cro 189. 224. 52 R 270.

Story 5473—

Story 5309. An innkeeper is liable in case of loss by common robbery? the innkeeper has as many means of colluding with robbers as a common carrier. 8 Co 322(a). Jones 135(a).
3 Bac 152. Plead g. Jones says that a free trade in robbery will excuse the innkeeper, tho' it will not a common carrier.
It seems he is not liable in case of robbery by persons from without the inn nor for the act of a mob.

By the Roman law the innkeeper was not
exposed in the act of public enemies &
inevitable accident but it seems that
our law does not extend his liability
quite so far. 1 Co 33d. Exp & 227.
But the doctrine in 1 Co that he is, 5 Co 27.
not liable - with default in himself
or servants is not law.

He is not liable for goods unless they 1 Co 33d
are infra hospitium. But the hospitium Exp & 226.
includes stables, outhouses &c.

If the goods of a guest are removed from the
inn at the direction of the guest the
innkeeper is not liable with negligence on
the part of the innkeeper 1 Co 32d. Rol 4.
Bull. 73. Ex horse to pasture. Exp & 227

If the goods of a guest are lost the burden of proof
lies on the innkeeper to show that they were lost in such
a manner as to discharge him from responsibility.
Story 5471.

III Mandatum, & delivery of goods
to be carried out although something is to
be done without reward. This is called by
Pon. to acting by commission, 1 Pon. 254.
Bull 73.

This case is like that of a depository
except that the duty of a mandatary lies
in feasance, the other in custody.

Loray 904 - On principle the mandatary is liable only
914. for gross neglect under a qualified acceptance.
1 Pon. 255 and such is the general rule as established
1 HBL 158 by authority, tho' the rule has in some cases
101:2 been picked away.

But there may be an express or implied
undertaking on the part of the mandatary
to use all necessary skill, 3 HBL 161:2. Some say
of doctrine advanced in H.B. is that
1.4 HBL 158 if a mandatary engages to use any
Loray 919 degree of skill the omission of that
degree of skill is of course gross neglect.
but this rule confounds all distinction
between gross & other neglect.

If one undertakes gratuitously ~~undertakes~~
to do something in the line of his
profession he implicitly undertakes to use
all necessary skill

3 BL 165.0
1.4 BL 158
1. CC 57 (a)
1. Caus 324
Ept 601

Mr. Wm. J. makes a distinction between the duty
of a mandator when it lies in person & when
it lies in another or carrier & says that in the
former case the law implies an engagement to
use all reasonable care & diligence. But I
can find no authority or reason for this distinc-
tion.
1.4 BL 158. 3 BL 165.0

This extends the liability of the mandator
beyond that of a private hirer of the other
party.

Where there is no express engagement to use
more care than the mandator takes of his
own goods the mandator is not liable for
less than gross neglect. 1.4 BL 158. 1. Pa. C 255.

But if the undertaking is in the line of
the mandator's profession there is an implied
undertaking for skill (ante) and now how
this implied undertaking does not extend
to any thing except the skill, not to the
reasoning, 2. Caus 324. Pa. C 255.

mandatum

But neither a mandatarius nor any holder
can exempt himself from liability for fraud
for such an agreement is contra bonos mores.
Jones 36.77.

It is seen from some expressions in the
books that the mandatarius is liable only
for tort & never on the contract, but
this is not quite correct, the contract
is good & is founded on sufficient consideration
for the delivery of the goods into the hands of the mandatarius
is sufficient to support any agreement whatever.
Jones 36.77.

20 of 667.3.
(Velt 128 contra)
20 of 667.3.

Jones says where the agreement is executed if
special damage is sustained by non acceptance
the person promising is liable. But he has
no authority established in the promise
was made he is liable for the fraud but
the promise cannot be binding it is
ab initio void & the special damage cannot
make it good Jones 71.

In what cases has

A lien is a direct claim to incumbrance upon the property of another for the security of some debt or duty accompanied by actual possession, liens are general or special, the latter are far more the former require strict proof 1 East 4

A lien I think exists only in the 4th & 5th chapters of bailment, in the case of pawn a lien is created by the very delivery with any thing more the lien is consummated in 244.5 by the delivery, but in the 5th chap the lien is created by the performance of the contract by the labour or carriage, Delv 178. Prec in ch 4. Ex D 553.

Most bailees of the 5th chap when they have performed their undertaking have a ^{special} lien for the price of their labour in case of pawns the lien is created by contract, in this case however the bailee creates a lien witht any contract. Ho 142 3 Bac 155.

But a third person who wrongfully obtains the possession from the bailee cannot take advantage of the lien of the bailee, the bailor may sue the wrongdoer & that witht tendering to the bailee the price of carriage. 3 East 585. 25 R 485.

Lo Ray 167. Common carriers have a lien for the price
Jack 654. of carriage until the price is paid, the
2. No R 54. law will not oblige the carrier to
insert or being paid before he can do so.

And if goods are stolen & delivered by
the thief to a common carrier he may
Lo Ray 167. detain them from the owner until price
for the carrier is borne to receive the
goods.

Lo Ray 101. An innkeeper may retain the horse &c if
Lo 147. his guest for the expense of keeping the
Jack 311. horse,
Ball 45.
Exp 514.

So if a horse thief takes the horse to an
inn the innkeeper may retain, & get the
expense, Selw 17. Popk 128. 174. Exp 2 114.

So too the innkeeper may detain the
horse of his guest until his whole bill
is paid, a horse can be detained
2 No 15 in until the expense of his keeping is
1 No 269. paid.

But a lien is always lost by a voluntary abandonment of possession, if the goods were wrongfully taken by the owner the rule is diff. 14tra 557. 1 Burr 493: 4.
1 East 4.

A taylor or other mechanic has a ^{special} lien on the materials until he is paid. 1 Co 147d
This lien is annexed in behalf of trade & commerce. 10b 42
12lv 67.

But I think that when a mechanic has been in the habit of trusting an employer for work he cannot insist on a lien unless the mechanic gives previous notice. 11 Bac 240 (n)

But a lien does not exist in favour of all bailees of the 5th class. If an agisting farmer, has not this lien. 12o 2197
Bull 45
Exp D 585
11 Bac 240.

The capt. of a ship has no lien on the ship longer for his wages for he is supposed to know the owner & to trust to their responsibility. 12lv 460.
Balk 33.
12lv 440
12lv 49
12lv 532
576.

But the mariners have a lien upon her, & the crew of a ship when they arrive at a port where

wages are payable they may libel the ship
in a petition of admiralty & have her
sold. Doug 459. Stra 437. Doug 101.
2410t 459.

But when there is a special agreement on
which the bailer relies, he has no lien for
wages there is an express agreement the law
implies none. If then a bailer agrees that
his reward shall be paid at a certain

2410t 459. time after the delivery & the bailer
2410t 459. must deliver & wait for his reward until
2410t 459. the time of credit has expired,
5 Dec 271.

2410t 459. In this principle it was held that where
2410t 459. there was merely a price fixed that the
2410t 459. bailer had no lien but they cannot be
2410t 459. collateral 345 can.

344.

2410t 459. 77pant 14. (2 Ph Er 123f.

A factor has a lien on the goods of his
principal & the same rule holds in favour
of mercantile agents genlly. Brokers,
auctioneers &c. vide allast 400.

35 R 119. Comyn & Merchant (14) 2410t 459.

1 Barr 494. 2 Bl R 1154. Esp 2 108.

2 Kent 602. A lien does not give the party having it a right to sell
the property detained. satisfaction can be obtained by bill in Eq.
~~A lien has no such no lien tho the law~~
~~a bailor may undoubtedly detain the~~
~~property until the time is expired~~
2410t 459. 1 Barr 240.

Depositories & Mandataries, have no lien
& can from the nature of the bailment
have none? —

Genl. liens can be established only by express contract or (2 Kent C. 640)
by strong evidence of general usage — The following classes of persons have been
decided to have general liens. Attorneys, Factors, Bankers, Dyers, Wharfingers,

If any person takes as his own the property of
another the bailor it ^{was formerly held} ~~must~~ ^{must} deliver the
property to his bailor 1 Rol 607.

1 Bac 237. 242. for it is said the bailor cannot
judge between the bailor & owner ^{and it was considered downright treachery to deliver to any but him} but this reason
merely shows that the bailor ^{is} ~~is~~ justified
in redelivering to the bailor, & this I think
is all whh the rule means, thus if the
bailor delivers to the bailor pending an
action agt him by the owner this ^{has been held to be} ~~is~~ a suff. 1 Bac 242
bar, but this rule implies that the owner 2 Ld Ray 867
might recover with the delivery to the
bailor & indeed if this there could be no
doubt for it is a genl principle that
the owner may take his property wherever he
can find it.

~~But it was~~
It is held however that if a wrongdoer builds 1 Rol 607
another's man's property & dies his ex'r must 1 Bac 237.
redeliver to the owner & that a redelivery
to the bailor is not a discharge to him for it was said
^{the ex'r comes into possession by law & must deliver to him who has title by law}
but this cannot be law the ex'r cannot
judge between the parties better than the
testator —

Story § 102 & on?

But the law on this subject is very different from what it formerly was. 1st the bailor may always deliver the property to the true owner of it, in case of real property in general a tenant must restore the possession to him from whom he received it, but it is otherwise with chattels. If therefore the bailor was not owner as if he stole the property or claimed it by a defective title as was himself mere bailor of it or had possession of it as servant of the owner in any case the bailor may lawfully restore the property to the true owner and in case of a transfer of property either by contract or by operation of law after the bailment the bailor may lawfully deliver the property to the new owner.

1 Bam. & Adolph

450

Story § 102

It seems too that on demand of the property by the owner in case like the foregoing the bailor is bound to restore the property to the owner & may be subjected if on such demand the property should be retained by him

May the bailor after such demand redeliver the property to his bailor and thus bar the owner from an action ag^t him (the bailor)?

Before demand made by the owner the bailor may I suppose restore the property to him from whom he received it & if he does so he is guiltless of no conversion of the property.

Bailments (104)

There are cases in which the bailee sells the property of his bailor as his own & in which the goods of the bailor are seized on Ex^{te} ag^t the bailee. The rule is that where the goods of one person have gone into the hands of another wrongfully, the owner may take them and where bailees instead they are sold in market overt.

In Engl^d by 21 Jac 1 If a person becoming bankrupt had in his possession order & disposition the goods of another by the owner's consent then goods are liable for the bankrupt's debts, & goods left after sale in vendor's possession the cr^d of the vendor in case of his bankruptcy may take the goods. 10th 106, 11th 11, 11th 348, 7th R 228, 5th R 12.

This stat extends only to cases in which the bailor becomes bankrupt 20th R 67.

This stat does not proceed on the ground of fraud but because false credit is given to the bailee by the possession of the bailor's property in possession is presumptive evidence of property. 11th 364-37, 11th 501.

Stat: of La: 1st

10th Nov 1854
11th Dec 1854
If then the vendor can prove that the
goods were purchased bona fide they
will not avail him where the vendor
becomes bankrupt & has kept the goods
under disposition

25th Nov 1854
It thinks that this stat is in affirmance
of the C & of this familiar principle of
the C & that when one of two innocent
persons must suffer by the act of a
third person he who enabled the third
person to cause the suffering must bear the
loss.

10th Nov 1854
3rd Dec 1854
5th Dec 1854
But this stat does not extend to goods
purchased by a bankrupt in right of another
C & for those who have the beneficial
interest cannot deprive the C & of his
possession they are in the C & possession
by act of law & not by the act of the
persons having the beneficial interest,
same of husband same of husband having
the sole separate estate of the wife

The stat however extends to the mortgages
of personal property when the mortgage
contains in possession by permission of the
mortgagee 1 Attk 105. 1 Ves 348. 1 Mils 260.

Exp 356. Rob 7C 457. 449. 101v 189. 190. 220.

This rule does not hold of mortgages
of land or of chattels real, for such
possession of real estate is no evidence of
property.

Again this stat. does not extend to the
sale of a ship at sea, because here
immediate possession could not be given
but the vendee must take possession as
soon as possible after his arrival

1 Attk 60
Rob. 7C 54.
557.
11v 361. 2
366.
27 R 462,
Exp 2566. 8
25 R 455. 40

And there are other cases in which actual
and immediate delivery of goods sold
is not necessary to secure the vendee,
if the vendor delivers the key of the store
in which the goods sold are

75 R 71.
2 Stra 955.
Exp 577.

12th 15
Apr 507
1 Feb 197
200

But to bring a case within this stat
the vendor must have possession of the
goods as of his own property or in the
language of the stat they must with
the vendor's consent be left in the
possession order & disposition of the
vendor. Hence a temporary possession
for a particular purpose by the vendor
of goods does not give the creditor's
in the vendor becoming a bankrupt a
right to the goods. unless the goods have
been put into box & remain for a convenient
opportunity to transport them.

1 2111 315.
3 2111 115.
1 200 132,
Apr 570.

The bankrupt in possession then must with
the owner's consent appear in all respects
to be himself the owner to bring a case
within this stat. Hence if from the
nature of the bankrupt's business it is
no evidence of his insolvency that he has
the possession order & disposition the stat
does not apply. Ex factors, private bankers,
in Engl: commonly called Goldsmiths!

In common cases of bailment when the bailee is not with the owner's consent in the sale & disposition of the goods bailed the stat. does not obtain & the owner will hold agt. the credits of the bailee & act a bona fide purchaser from the bailee except in case of sale in market overt. & the hire of a carriage of a horse & carriage. for it is so common a thing to hire & borrow carriages & horses that the possession of them furnishes no evidence of property.

38th 44.
1 Nils 5
Litra 1117
Salk 283

The rule of the com. law that the owner may claim his property, into whose ever hands they come by the act of a third person does not hold of money, bank ~~notes~~ bills, 458. and negotiable bills transferable by delivery, 3 Bun 1510. If then I deliver to A as depositary, money and A in breach of trust pays out the money to a bona fide receiver, I cannot claim the property agt. the bona fide receiver & here the fact of the depositary's bankruptcy has nothing to do with the case, 57 q. 80

Salk 126
1 Bun 452
1 Bl R 45
1 Bl R 45
57 q. 80

We have no such st in Conn. as this, if fact but we have adopted as our com. law the reason & spirit of the statute,

to keep a case within the principle of the case that
the things must concern the same, must become
bankrupt or insolvent & say the bailer must
with the owner's consent appear to be the owner
of the goods, & if it then the bailer cannot
hold out the bailer unless the bailer's consent
be made in respect to the owner or it has his
consent to the bailer.

and where the bailer is insolvent
the owner cannot hold unless the bailer's possession
was with the bailer's consent such as to give
the bailer a full credit.

B & P 12:1 248. Don 300. Rob. 3:2. 550:4. 2.
Cooker B. 234. 7 H. 67. 257. 2 H. 115. 110:244.
209:40.

If goods are left in the temporary possession
of the owner for a convenient & reasonable
purpose the owner will hold against a third party
the owner.

A was owner of a large drove of fatted cattle
& appointed B the driver of them to New York
B sold them in L & the owner lost them
of the value of B & recovered. (Cont.)

If A is at B for six months can
 his interest be taken in ex'n of the bailor's
 creditors? It looks clear that he cannot.
 But in 75 R 24 leased a furnished house to B for a year B's creditors took the furniture
 & in ex'n and it was said that the
 court could hold, but this case was on the
 principle that the house could clearly be
 taken being a chattel real & the furniture
 was merely an appendage to the house.
 But in the case of bailments the contract 55 R 204
 is fiduciary, 75 R 20.

200.
2 Bait 201
1000.

Before right of action not wrongdoer.
The bailor as he has a semi property has
an action adapted to the nature of the
case not an etiam who wrongfully
takes or injures the property in the bailor's
possession.

The principle is that personal property
drawn after it a constructive possession,
which is a right of possession.

Whenever the bailor then at the time of
the injury done, a right of present
possession he may maintain trespass.
1. H. 435. 2 R. 465. 1. R. 410.

But if at the time of the injury done
the bailor has not the right to take the
goods at pleasure from the bailee the
bailor cannot maintain trespass or
trover. If then goods are pawned for
six months or let for that period the
bailor cannot sue for an injury committed
during this period. 4 R. 419. 1. R. 410.
Esp. 1313. 576. 7 R. 4. 1 John 432.

After the term of the bailment has
expired the bailor for a subsequent
trespass or detention he may have trespass
or trover.

It is said that when the goods are taken during the period for which the bailor has the exclusive right of possession the bailor may have a special action in the case for injury to the proprietary interest.

1 Ch R 167
1 Phil 133.4
1 John 432
11 John 385
1 Ch R 324

If goods are wrongfully taken from a depository or mandatary or injured in their possession the bailor may maintain trespass or trover for he is in the constructive possession. He has a right to prevent possession from the depository &c.

And this rule I trust holds in all cases in which the bailor has at the time of the injury done a right to countermand the delivery, as in the case of a carrier upon paying the fee.

If a bailor delivers the goods into the hands of a stranger the bailor cannot have trespass against the stranger for the stranger does not take possession wrongfully nor can he have trover without demanding &c.

5 B R 164
261.
1 B R 237.
1 R R 600.7.

But if the delivery on is a breach of trust the bailor & stranger are ipso facto guilty of a conspiracy.

7 East 5.
Holt 66.7.
20 R R 107.

Bailees right of action against strangers
But in all these cases when the goods are
wrongfully taken from the bailee &c, the
bailee may have trespass or trover as to the
wrong done in the first value of the goods
5 Bae 165. 262. 20 Ragn 270. Bull 33.
Exp 5 577. Talk 140.

and then true of all bailees of finders.
Stra 505. Bull 33. Exp 5 575. 577.

But it has been said that a depository
cannot maintain the action because
he is not liable over for a loss.
5 Bae 164. 5. 262. Co Litt 69. 13 Co 69.

But the rule itself and the reason for it
are incorrect. The ground of the bailee's
right to recover against a wrongdoer is
not his liability over, it is his special
interest & lawful possession, 75 R 372-5
Exp 2 477. 577. Stra 505. Choul 264. 4 All 404.
12 All 254. 2 Saund 380. 13 Co 69. Bull 33.
1 B & P 44.

The bailee's liability over cannot be the
ground of the bailee's right for the it is
an action ~~at~~ the bailee not the stranger
cannot try the rights & liability, & the
bailee over, the it cannot try these two
issues.

If a bailor delivers the goods to a stranger
the action may have an action not a
wrongdoer, 1 H. L. 607. 5 Bac 201. 222.

The action may maintain an action in
his own name at the highest bidder the
the goods are known to be the goods of an-
other. same of a broker, 1 H. L. 51. 2 H. L. 591. 2
1 H. L. 5. The reason is that those agents Park & 403
make the contract in their own names. 1 H. L. 32.
same of master of ships who carry freight. Ball & 130.
and of mercantile agents generally.

When the bailor & bailee may either of them sue the
wrongdoer cannot be twice subjected and a judgment in
one bars the action by the other for the full value 13 Co 84
5 Bac 156. 263
2 H. L. 564

It is sometimes said that if both sue he that
first recovers will oust the other, but it is thought
that he who first commences the suit attacks
in himself a right of recovery which will oust the
other, if his action, this is the case where a servant
is robbed & sues on the 1st of Winton, 127
3 Bac 559.

If the bailor has recovered satisfaction from the wrongdoer he cannot afterwards sue the bailee. See Ramm 1217. Gro C 24. 35. 3 Dec 124
Anck II. cap 2319. Yelv 68.

But it is thought that if the bailor commences an action agt the wrongdoer he by that act tacitly waives his action agt the bailee.

If the bailee first commences an action for the full value agt the wrongdoer he becomes liable at all events to the bailor.

But the bailee may sustain special damage independent of the value of the property. Ex c^d lets a horse to B & the horse is taken & c^d recovers the value of the horse still B may sue for the damage sustained by being stopped on the journey. —

Remedies, between bailor & bailee,

If the bailee wrongfully takes property from the bailor the latter has a special action on the case agt the bailor, or an action in most cases on the contract as in hiring, lending &c. 51 Bac 115. 266 Esp D 401.

But can the bailee have trespass or trover in such case agt the bailor? The bailee's right of action is founded on his special property the value of the property ought not to be the rule of damages. As it is in trespass & trover, but as between the bailee & bailor the bailee has at most only a term, a right of custody & use & this is the only right on which his action agt the bailor must be founded, Stra 505 Esp D 575 13 Co 69 contra

Agnt the bailee can maintain no other action agt the bailor than detinue, trover or a special action on the case. He cannot in genl have trespass

Bull 72.
Cro E 781.
Cro J 244.
3 East 62.
11 Will 112.
2 Do 319.

But if the bailee wantonly destroys the property
bailed the bailor may have treble damages, or he
may wantonly set the bailee free, as the
bailee is a bailee, 5 Co 140. 5 Co 13 (4).
as to 57c. Park 5191. 2 R 405.

Wine & Winekeepers

It is a common law exercise the employ-
ment of an unlicensed wine shop should be
so multiplied as to become public nuisance
and then the wine shop established are
subject to an indictment as nuisances.

1 Kel 14. Cr 1594. + 12 115. 3 Pac 171. 9.
Cr 1549.

But an inn is becoming disorderly is a
nuisance & the keeper is liable to an
indictment.

4 Bl 111
14 Rank 1
225

But in Engl: & in Court no man can
become an innkeeper without licence this
is now the rule in New York, & in all the
New Engl: states.

The duties of innkeepers in jail extend no
further than to the entertaining of
travelers & to the keeping of his guests &
house &c.

12 115.
3 Pac 116. 1
12 32.

But an innkeeper is not bound to protect
the person of his guest from battery &c.

If an innkeeper agrees to entertain a
4 Bl. is traveller on price tendered next reasonable
4 Bl. 101 cause he is liable to an indictment as well as to a civil action,
but he is bound only to entertain
travellers

He is not discharged of his liability for
6 Bl. 122 the goods of his guest by his absence
3 Bl. 112, a breach instantly, this strictness is founded
in policy.

1 Bl. 2 But an infant innkeeper is not as such
3 Bl. 112 liable for the liability of an infant
innkeeper is founded on contract,

2 Bl. 113 But there are causes which will excuse an
Eyer. 51. innkeeper from entertaining travellers.
as sickness of his family. fulness of his house,

If a host receives his guest to lock his apartment & refuses to be liable for his effects unless he does, I think that 3 Bac 13 the innkeeper in case of loss cannot be subjected.
Alone 71.
155.

It has been contended that a man delivers 1 Co 53 (1) of the key of a room to the guest, dis- 3 Bac 13 charges the innkeeper unless the guest locked the door.
But this is now denied.

The host is liable tho' he is ignorant of the kind & value of the goods if the guest unless perhaps the host has wantonly deceived 1 Co 33. 3 Bac 13 5 R 275.

The innkeeper is liable to the same extent as in innkeepers, for the property of those who remain with him for a long time at the price given by travellers. But he is not liable for the goods of boarders who pay only the price of boarders. 1 Co 32, 4 1 R 23. 13 Bac 113.

one is not chargeable as innkeeper for any
goods in the absence of the owner for keeping
whh he receives no price, but this rule
supposes such an absence that the owner
could not be considered as a guest.
3 Bac 183. Cro J 188. 5 TR 273. 4oy 126.
2oph 174.

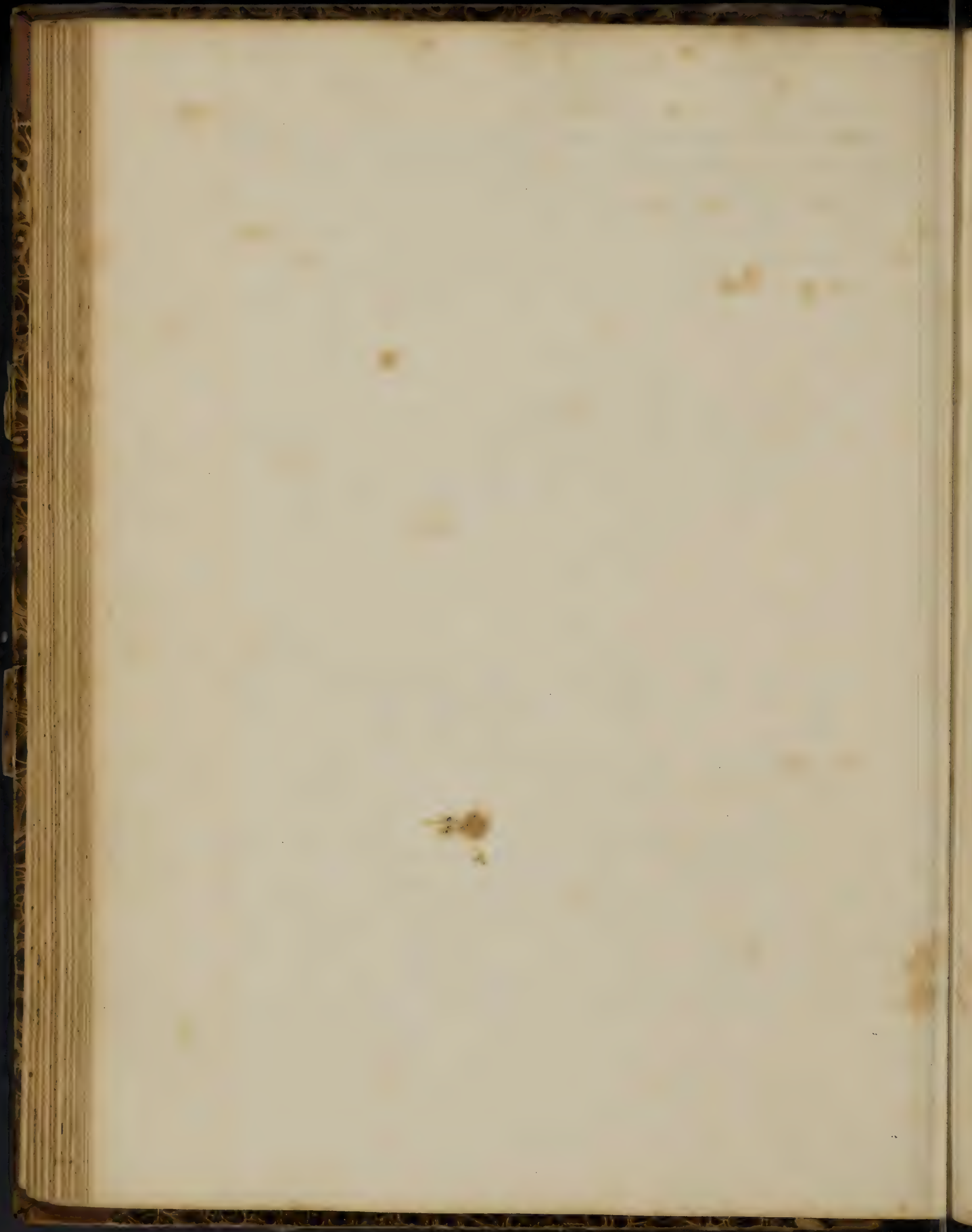
2209111
4oy 126.
Lalk 588.
1K.63.
But for any property for the keeping of whh
he does receive a profit the innkeeper is
liable tho the owner be no guest,

Lalk 331
Lalk 58
2 K. 65
The innkeeper has the same actions agt. guests
whh any other person in such cases might
have, but he has also a lien on the
person of his guest until the whole bill
is paid.

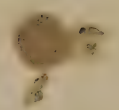
3 Bac 186
And if the guest abscond without permission
from the inn without paying his bill the
innkeeper may pursue & detain him
till paid.

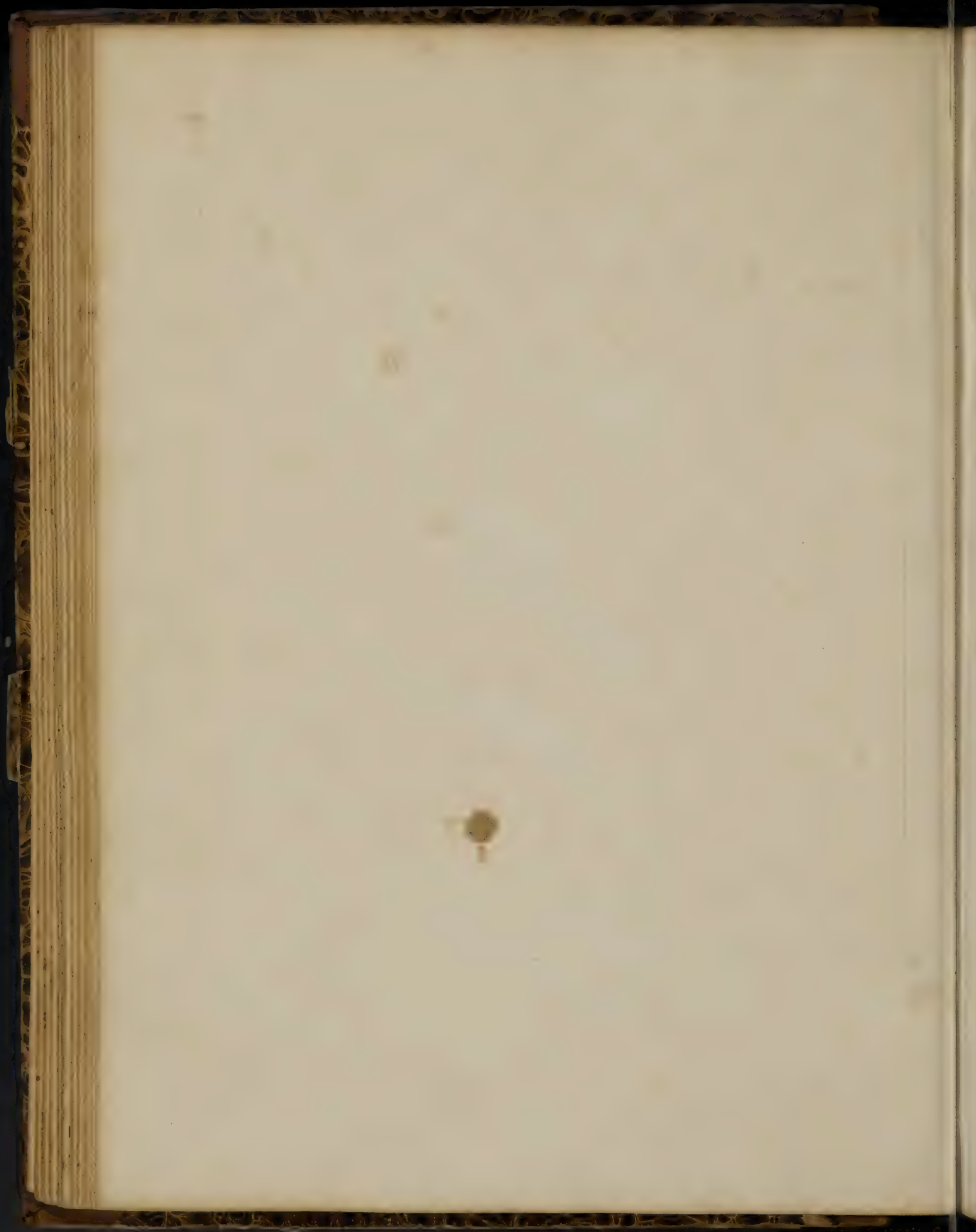
but if the guest by permission of the
landlord leave the house he can never
after detain,

where he retains the horse of his guest
he cannot use him, Str. 580. & Bae 185.

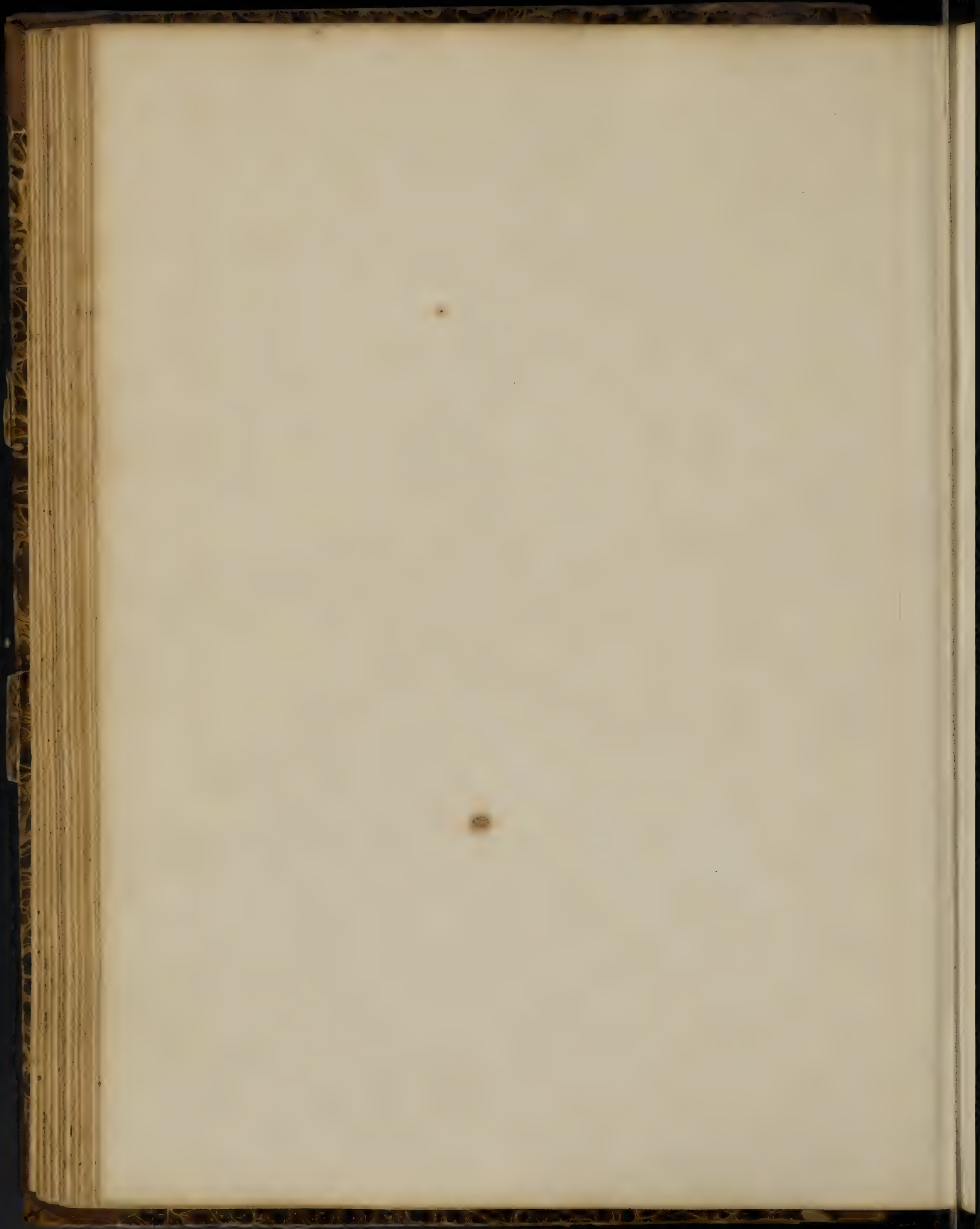


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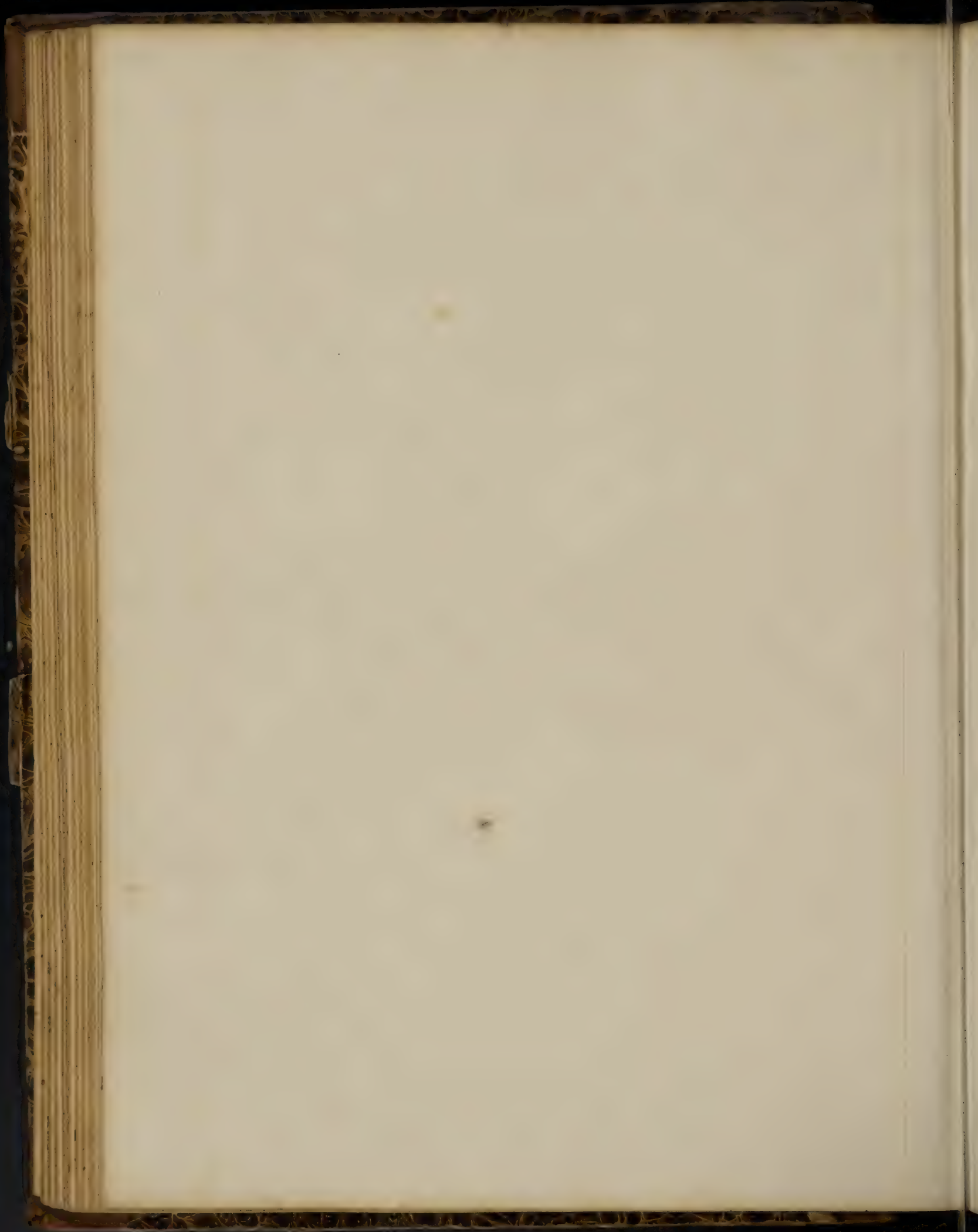


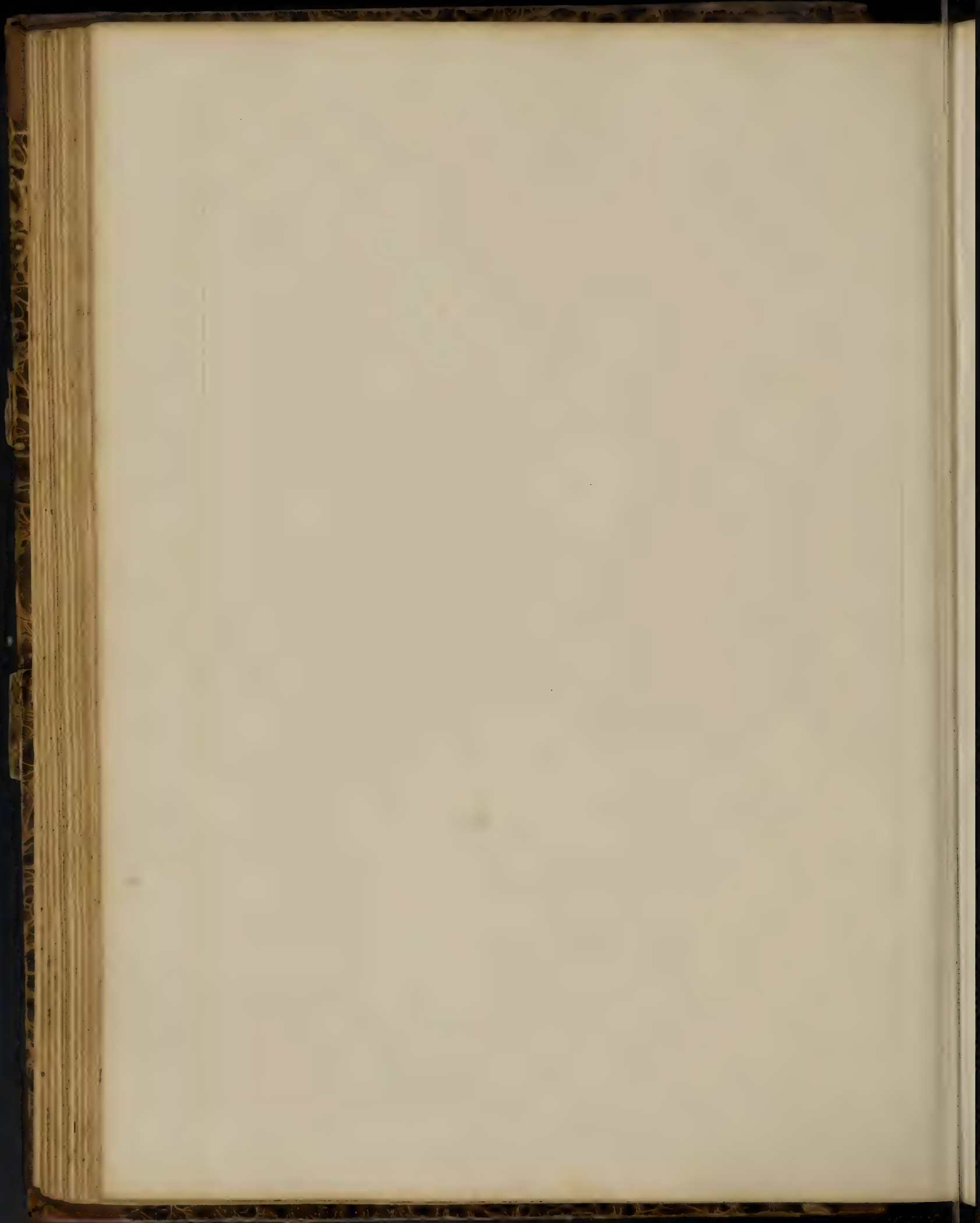


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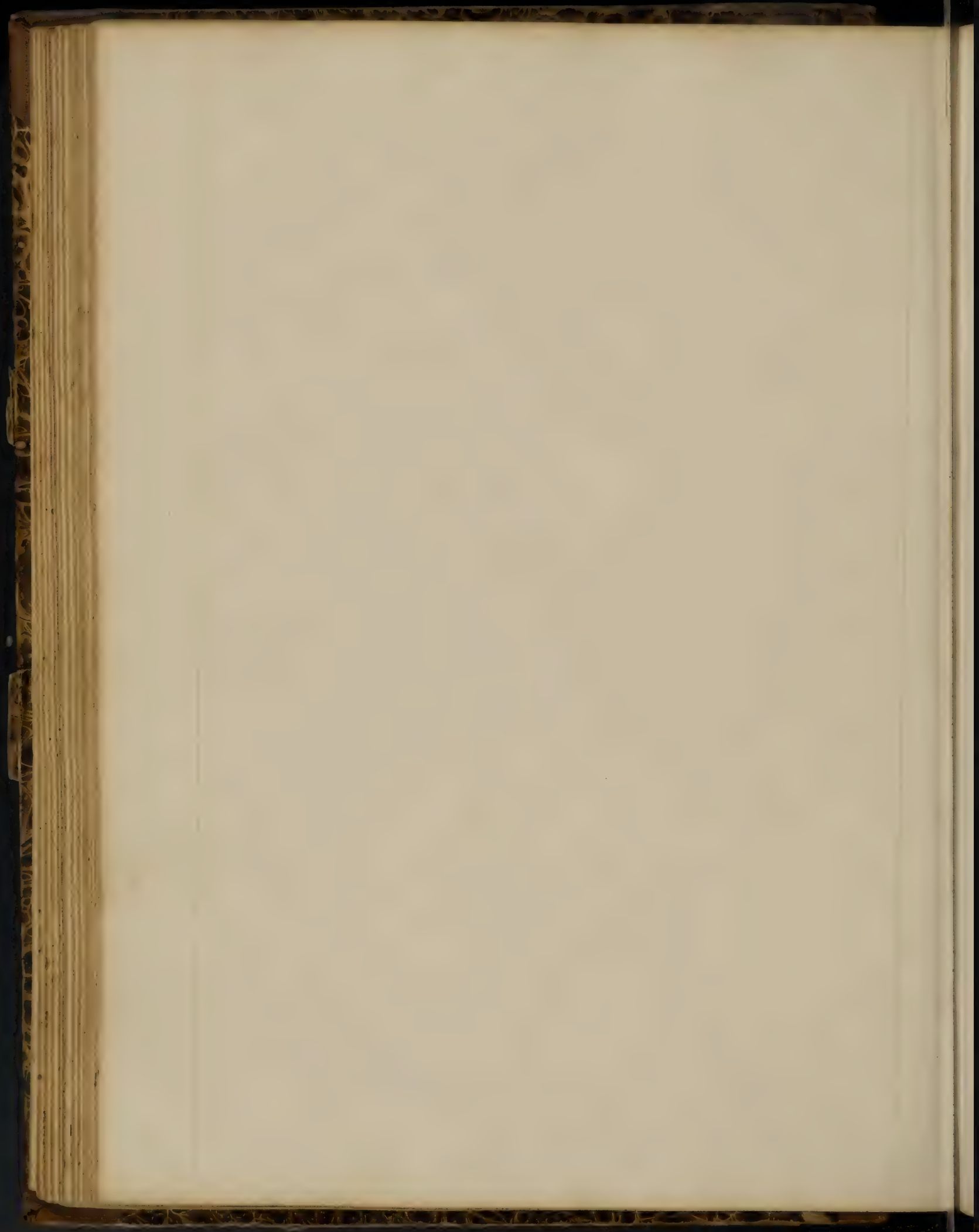


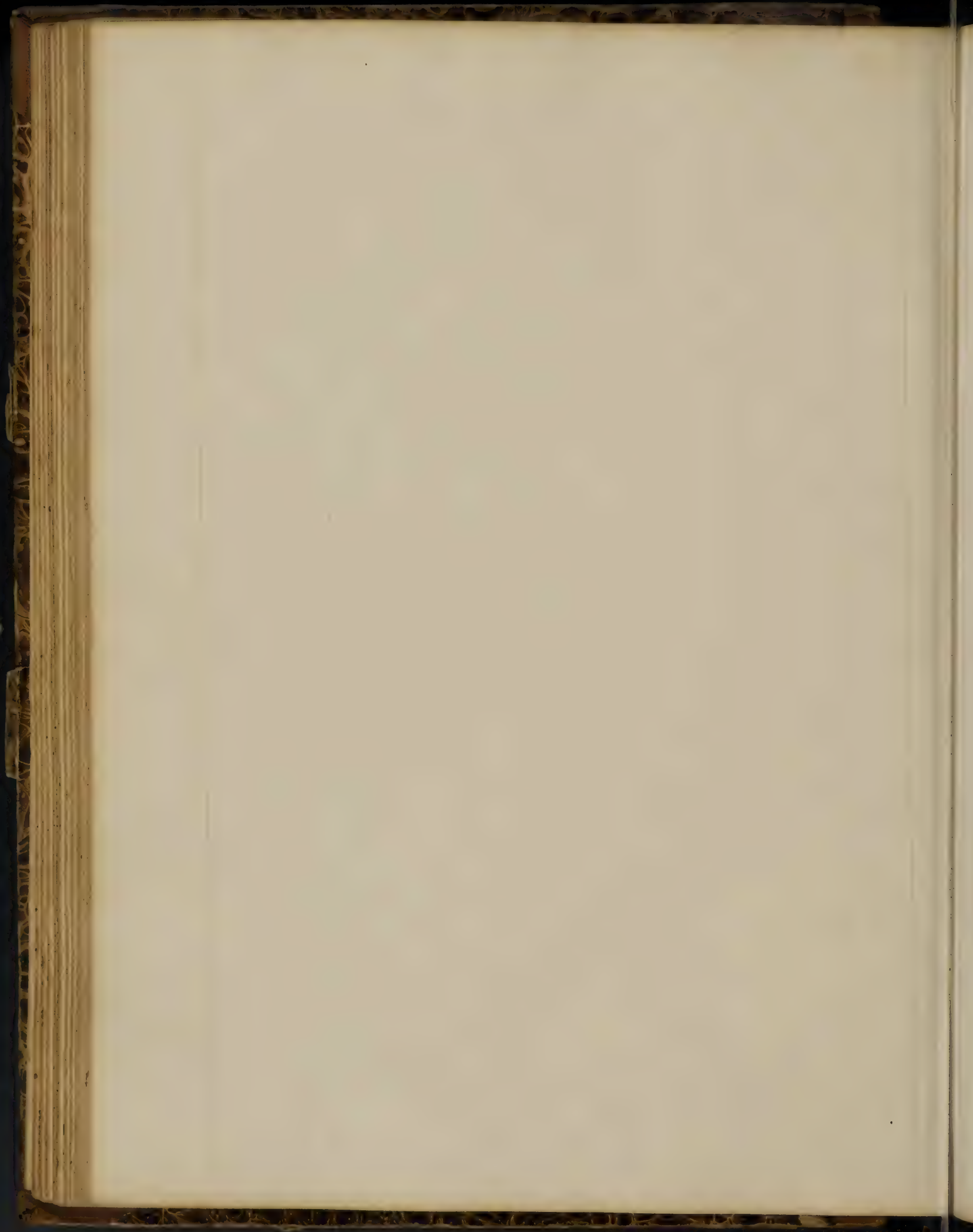
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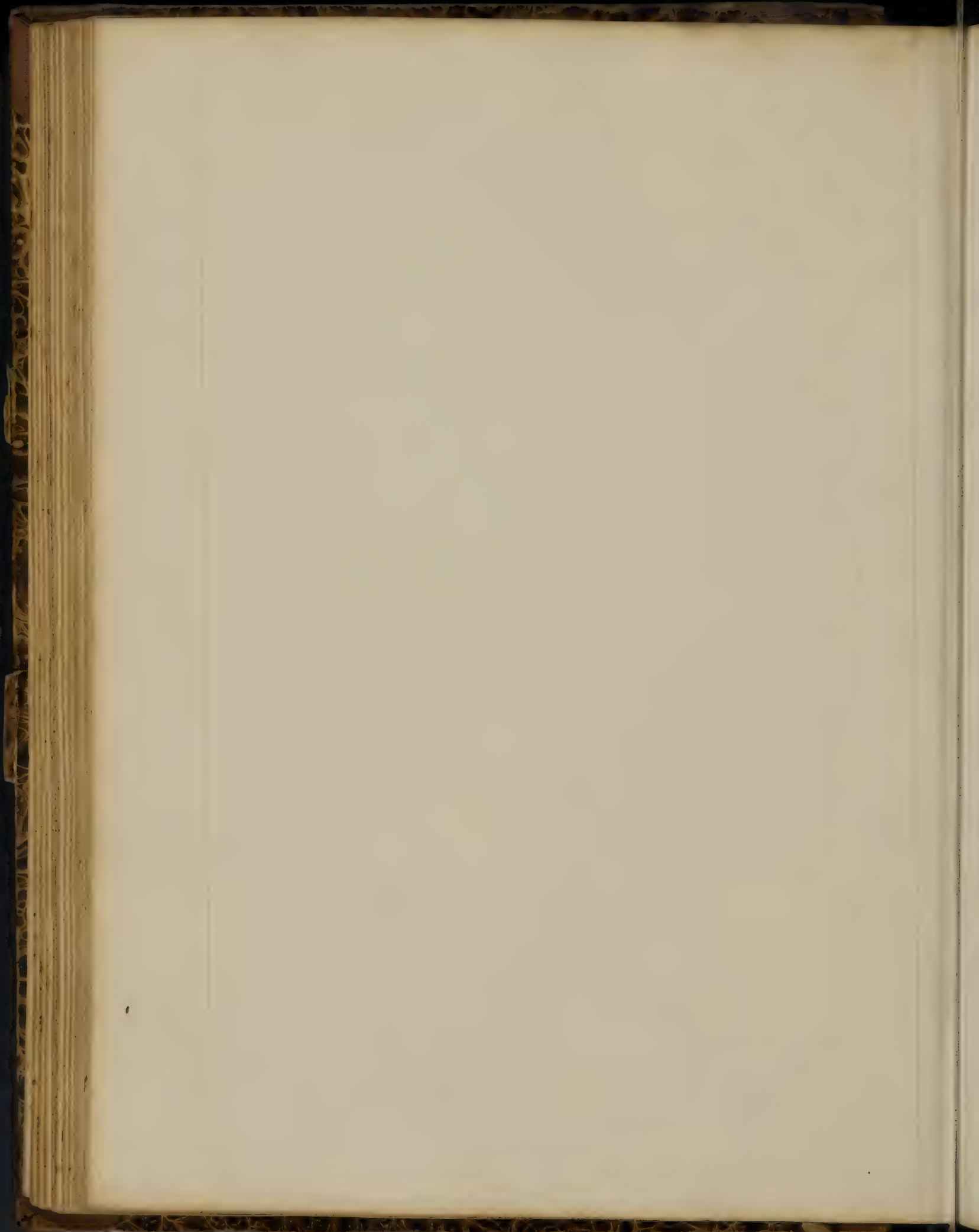


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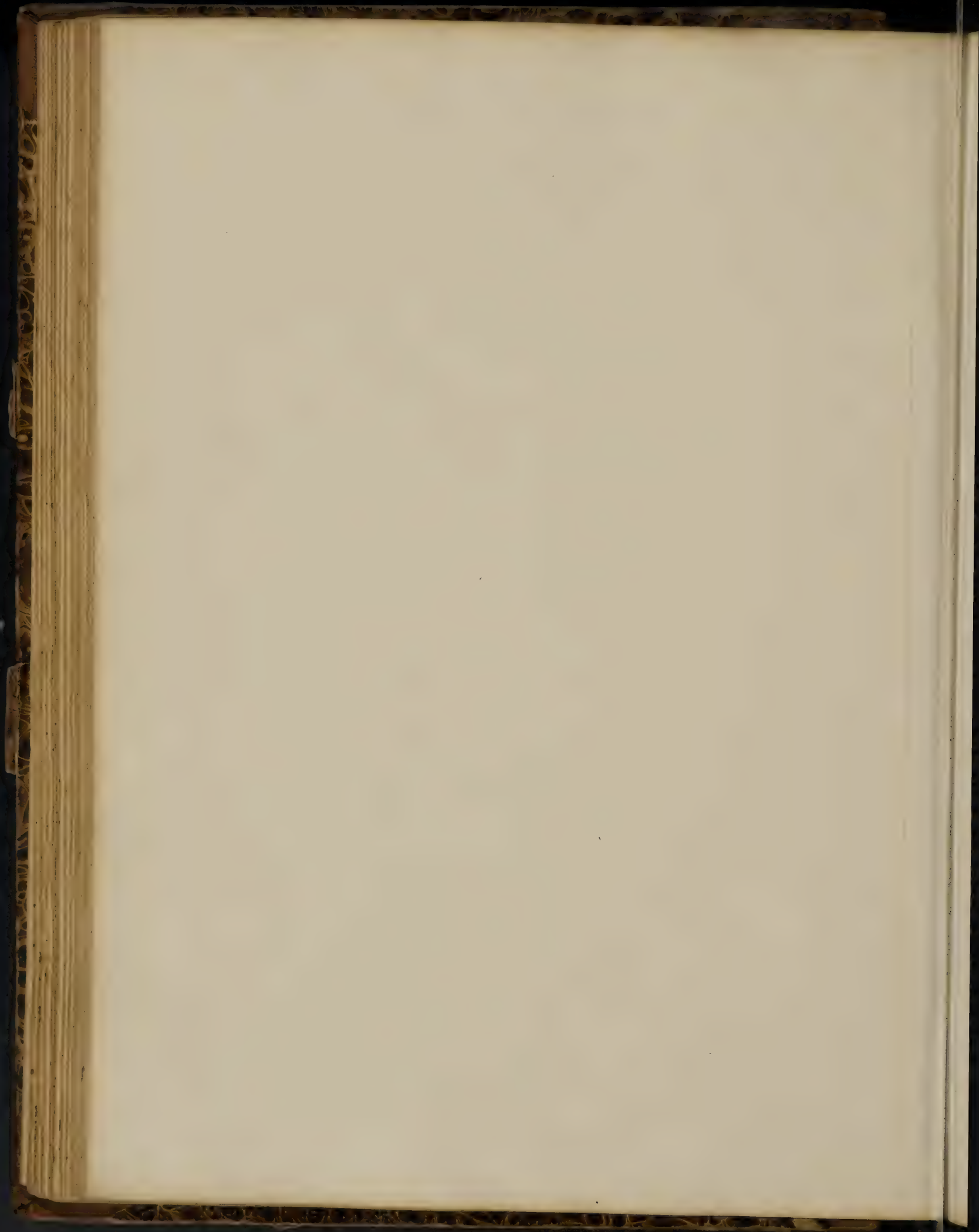




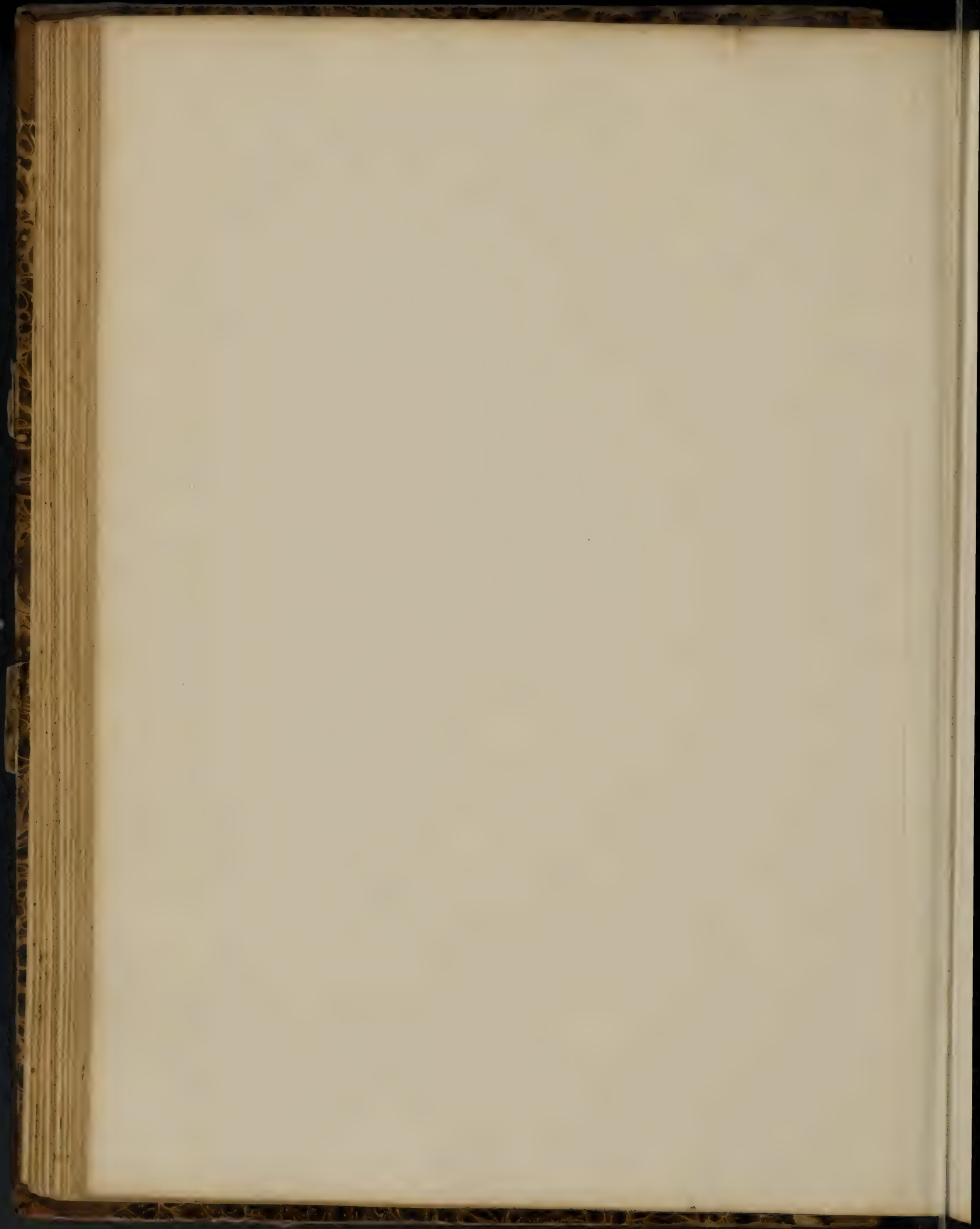
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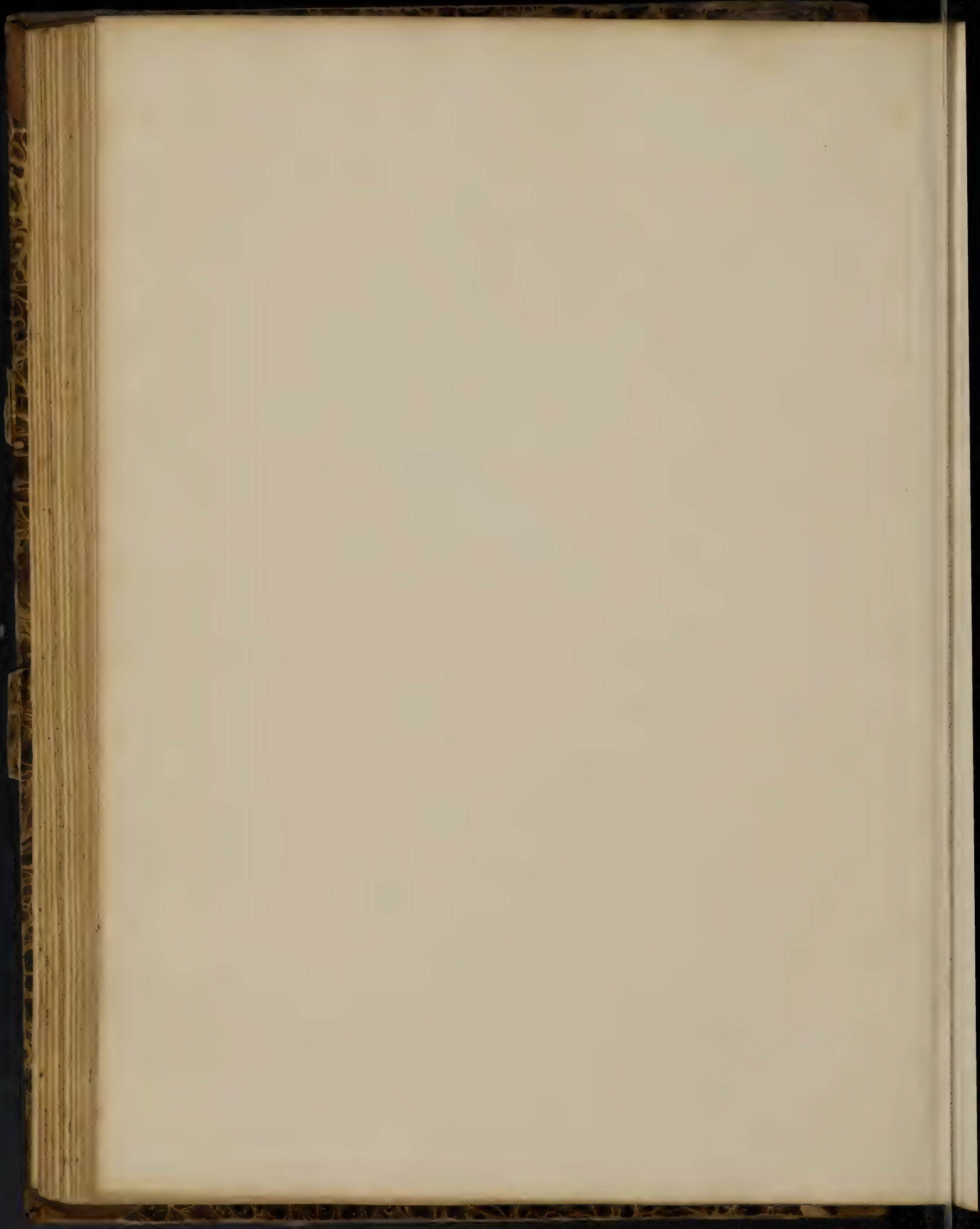
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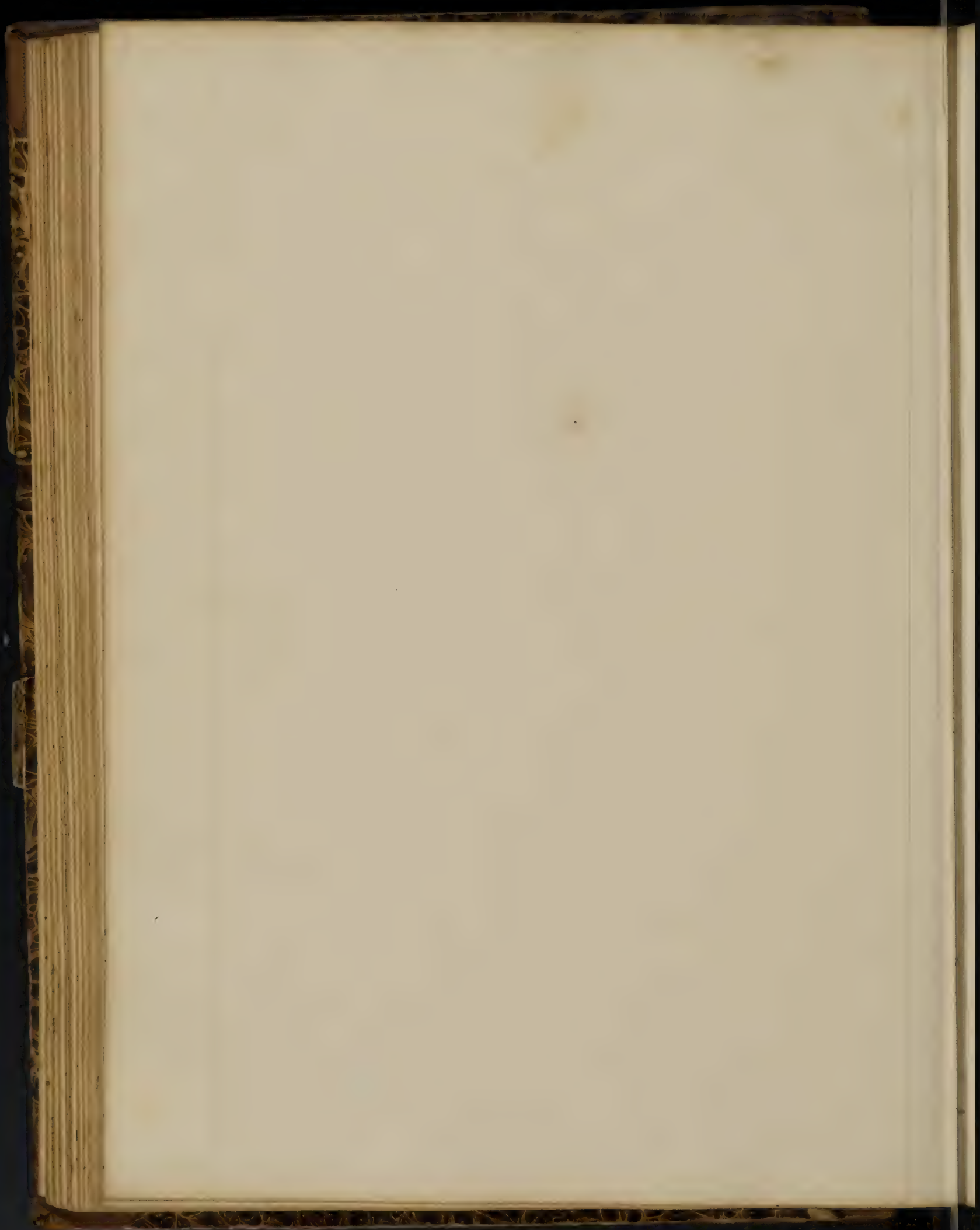
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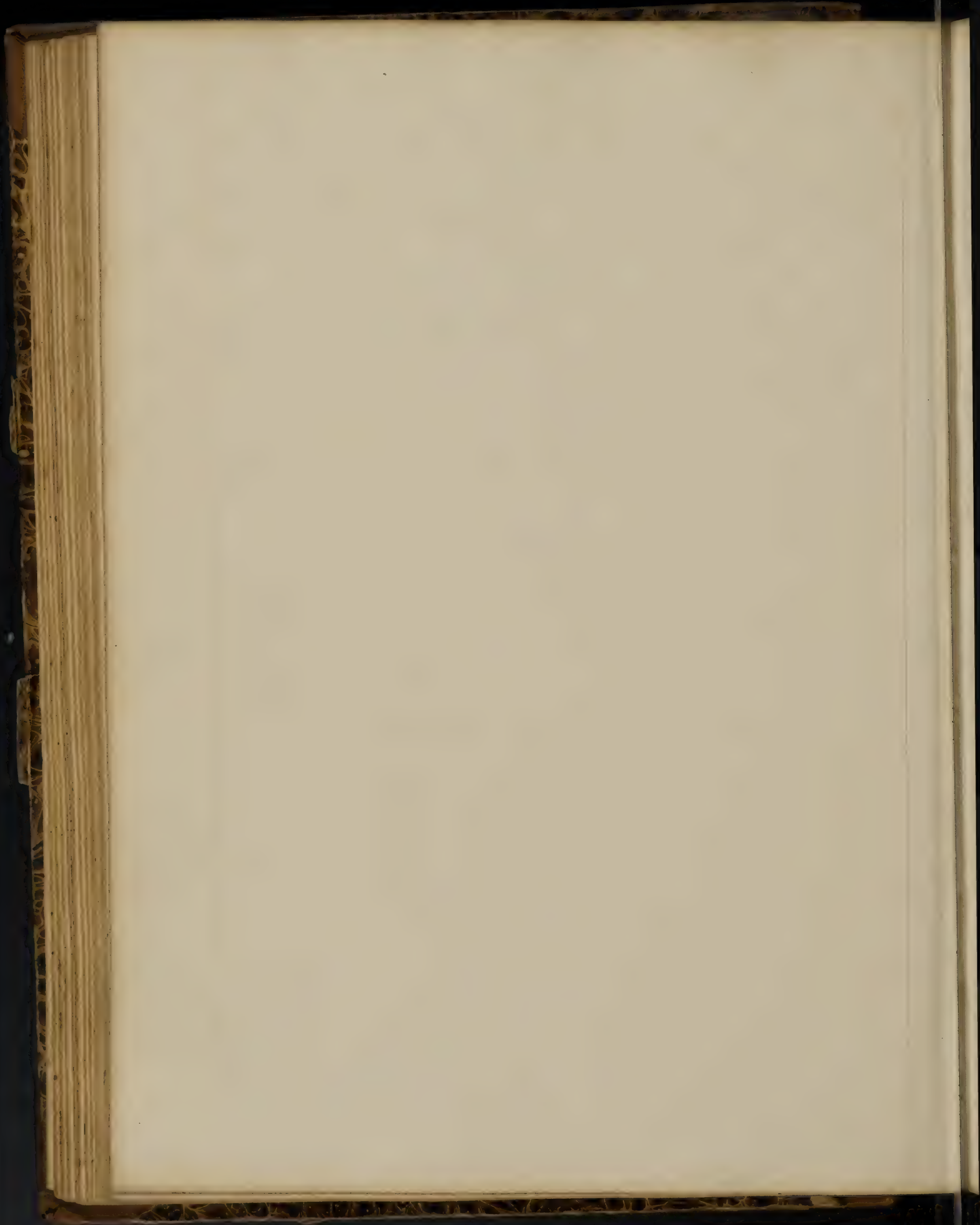
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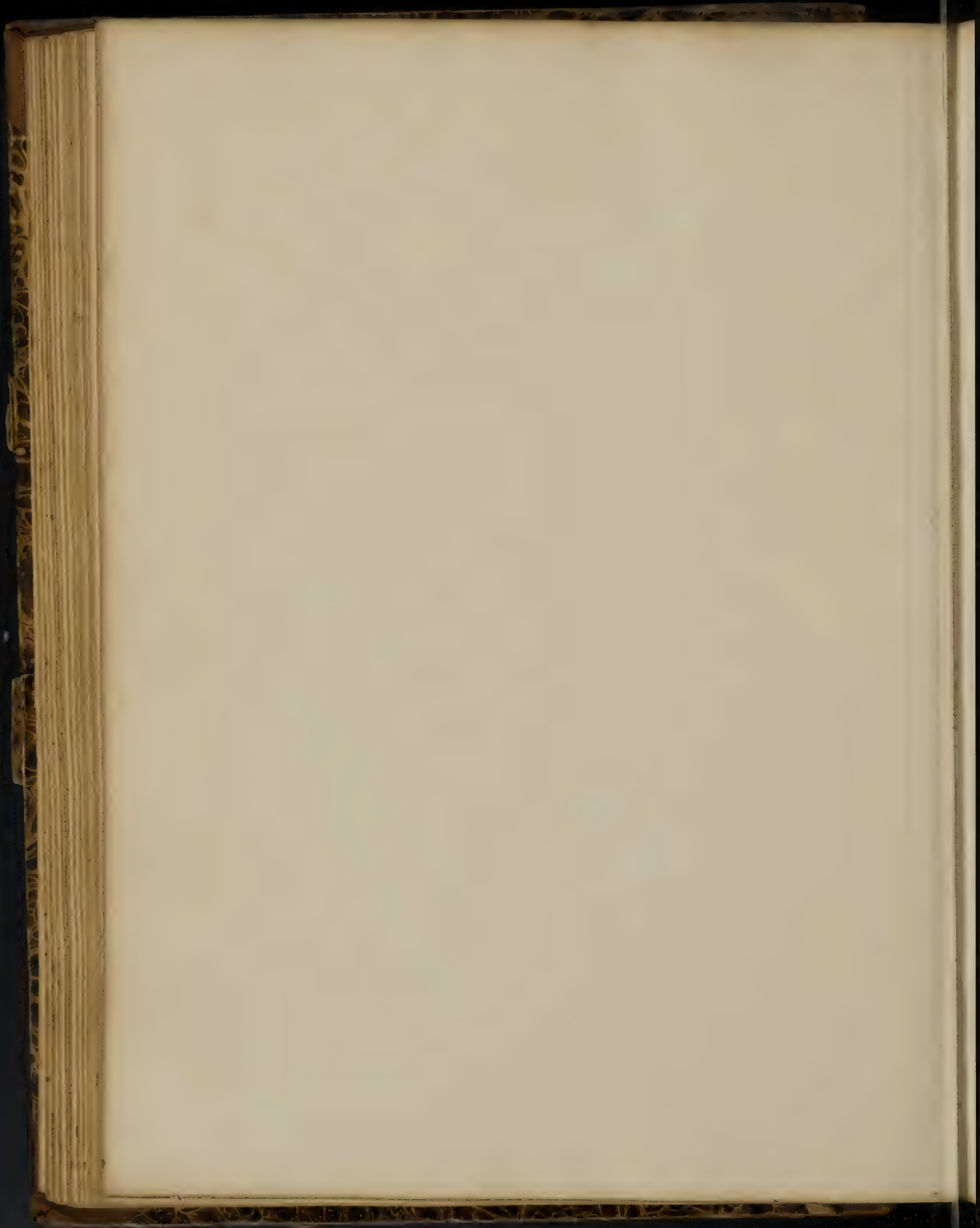


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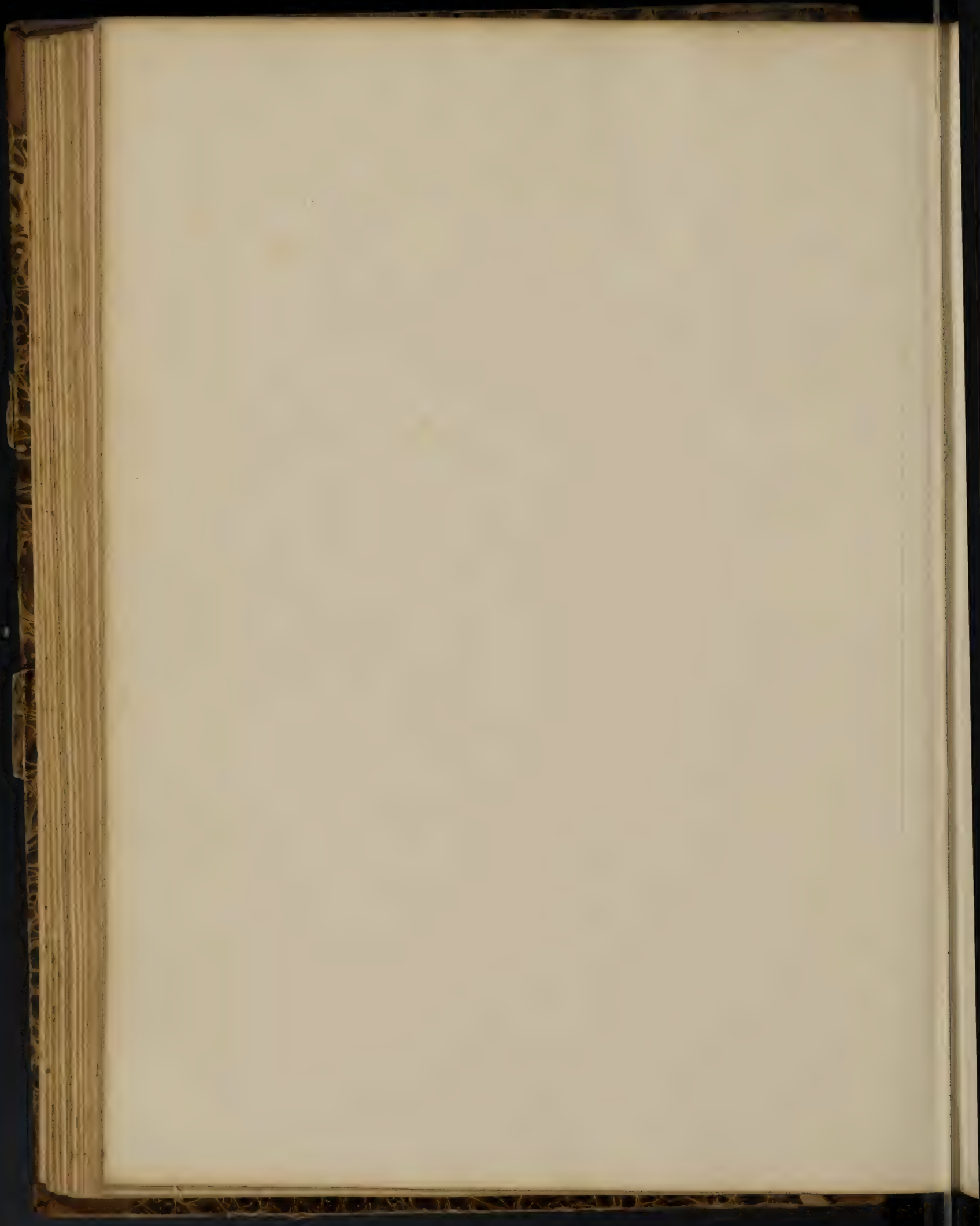


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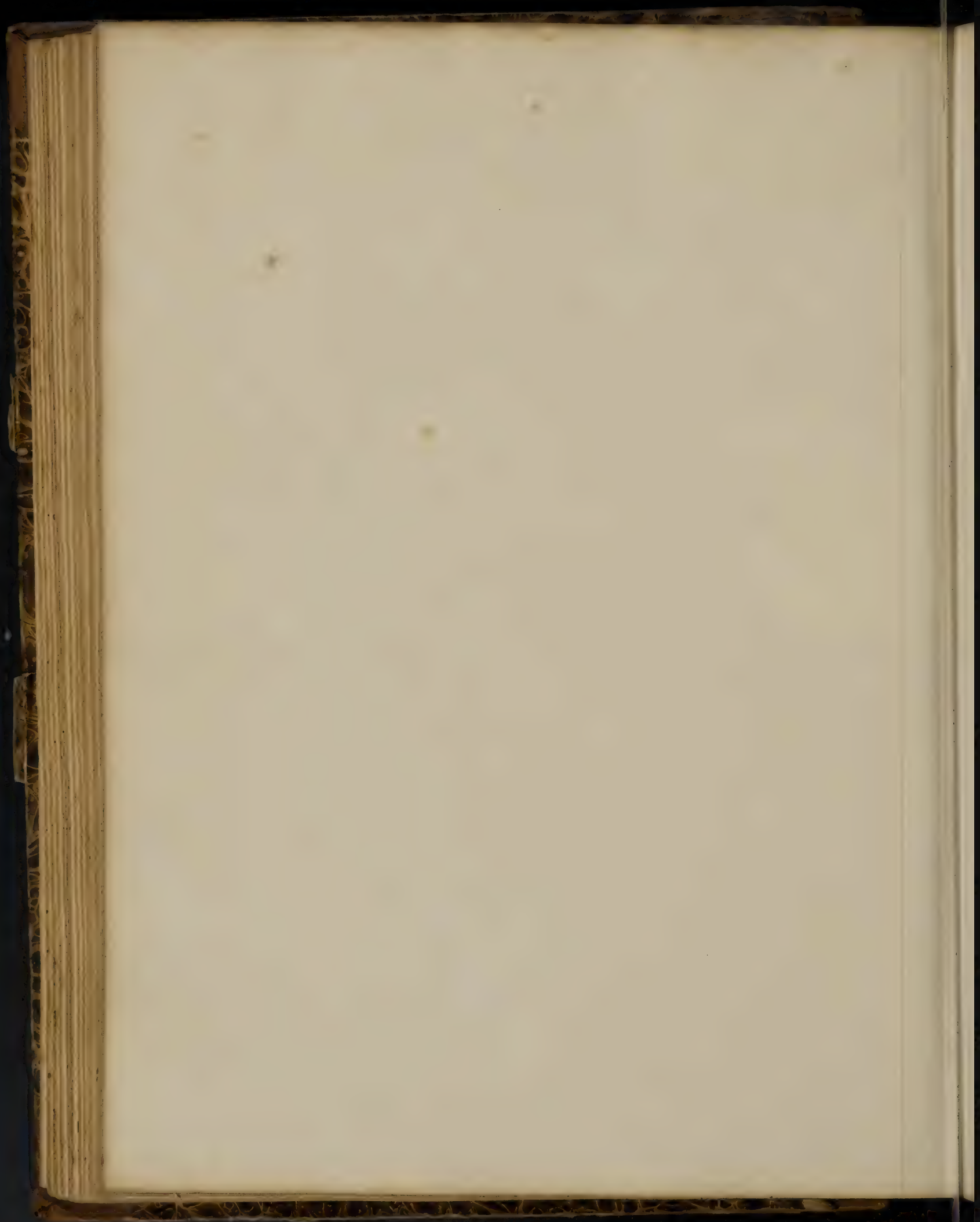




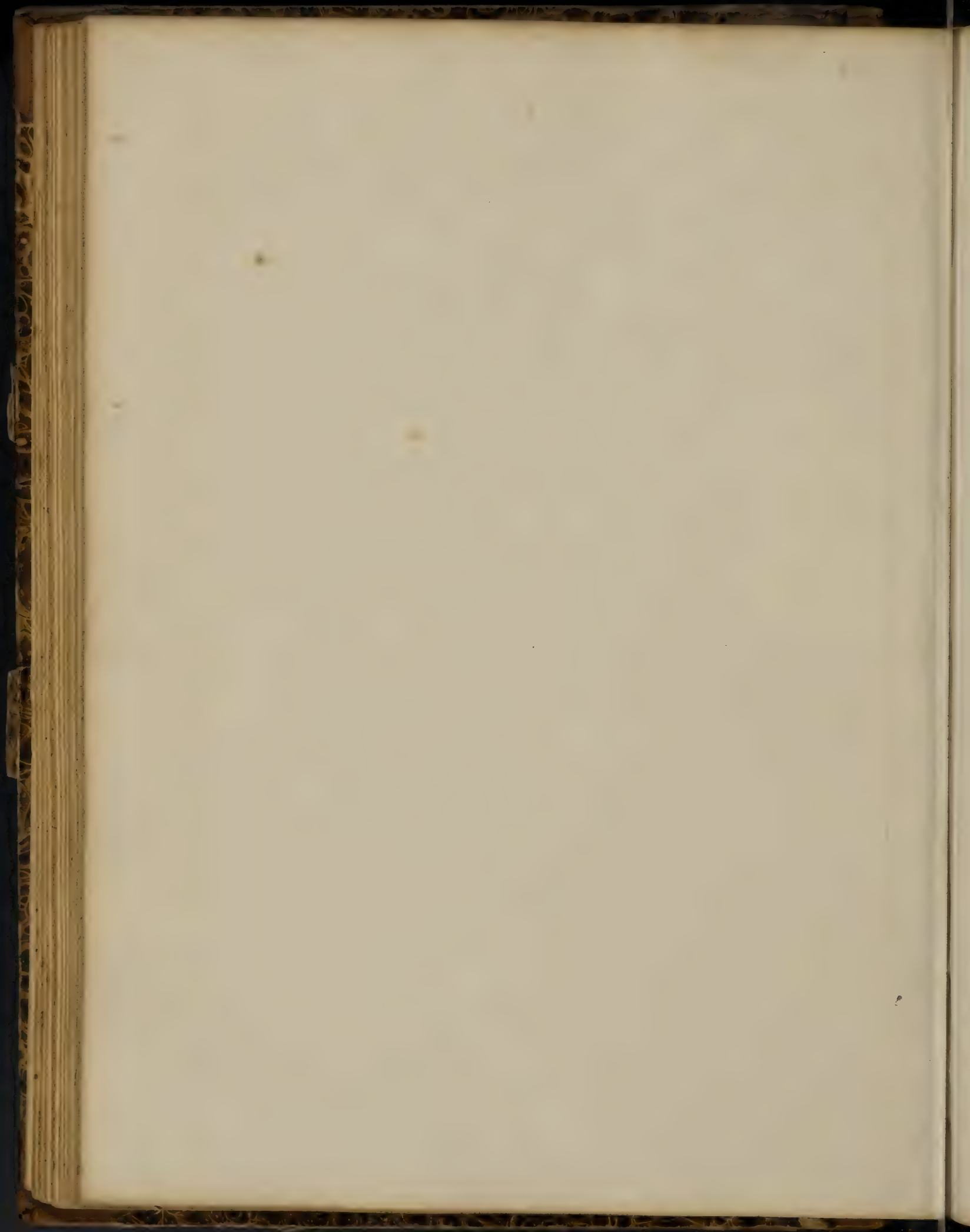
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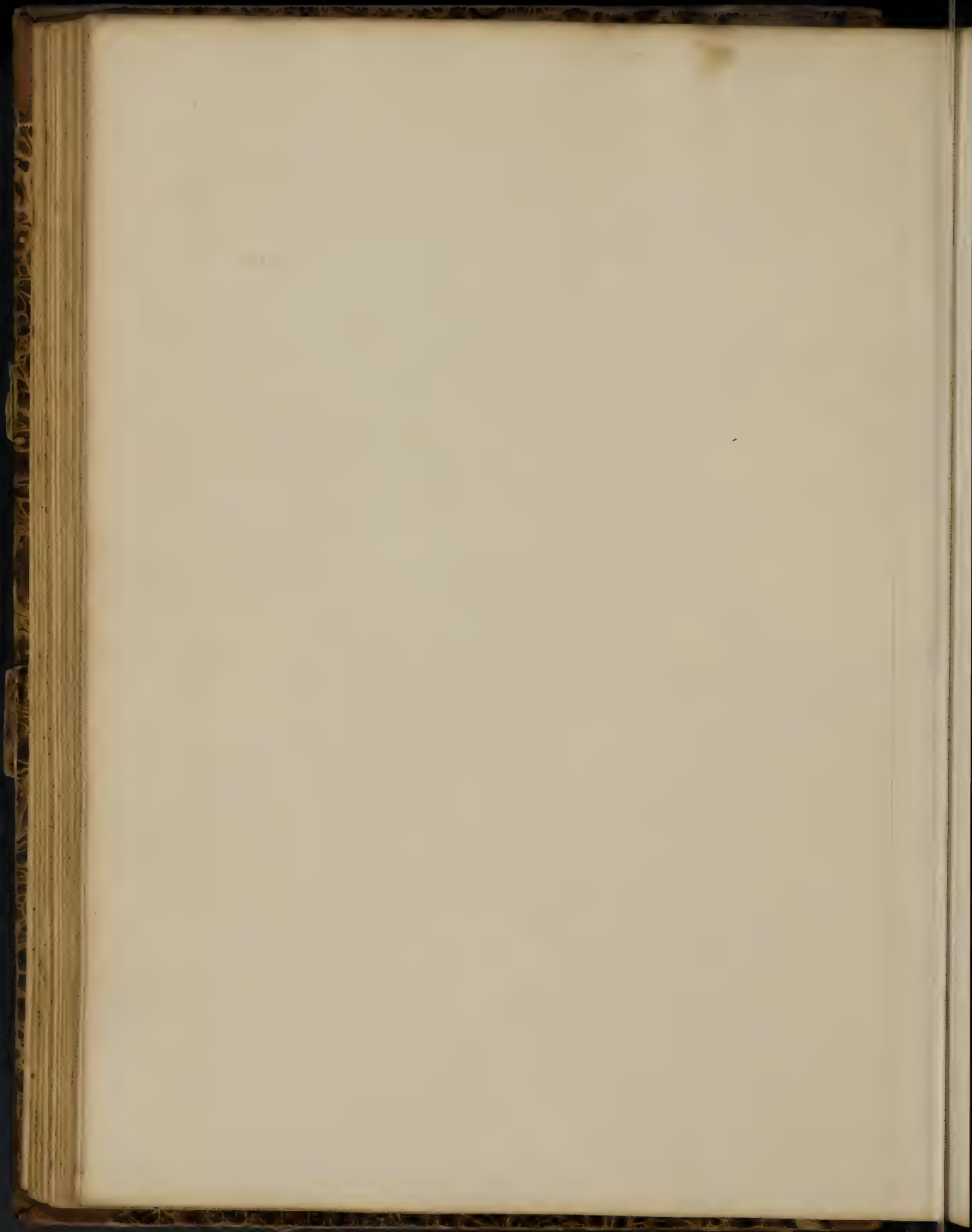
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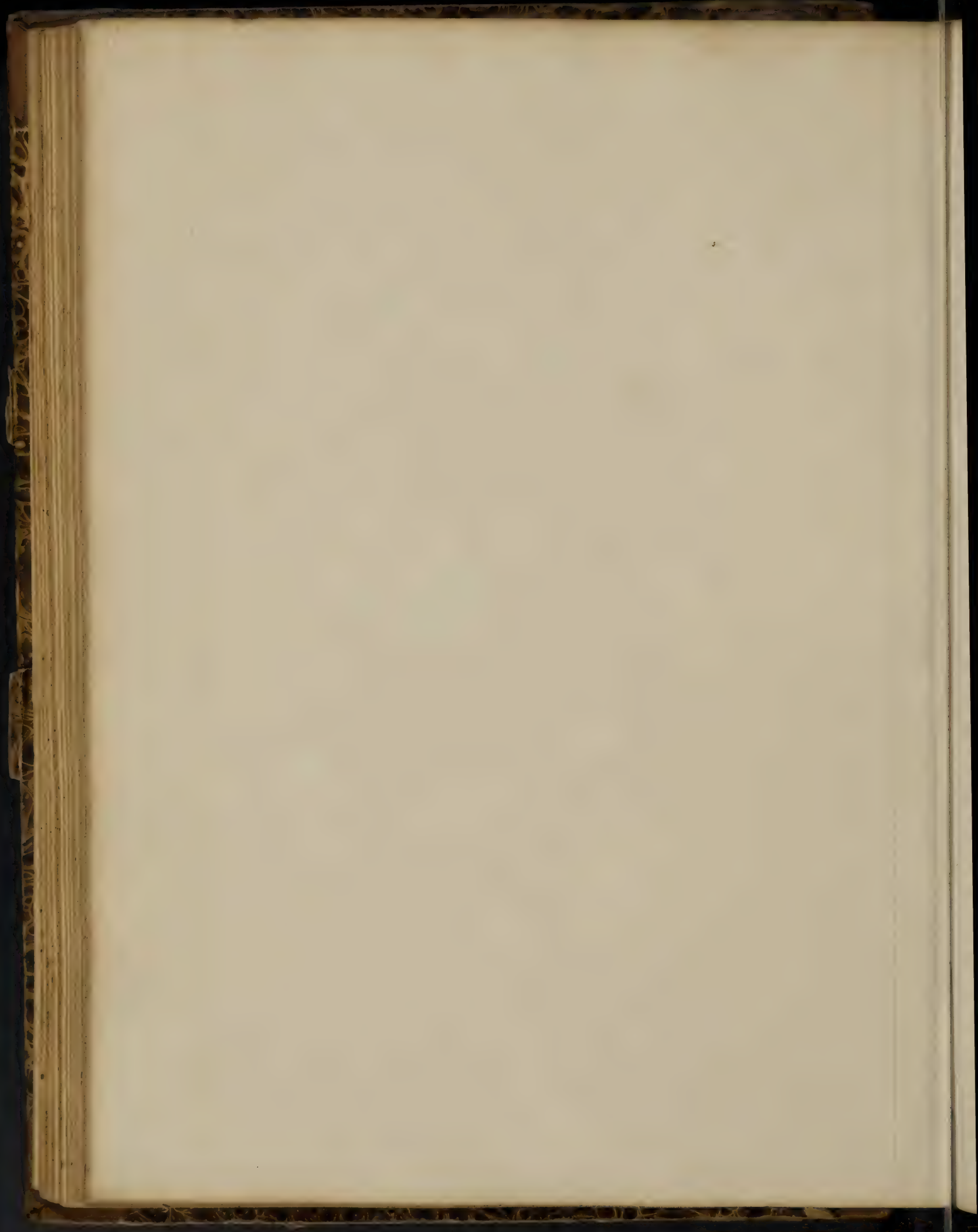
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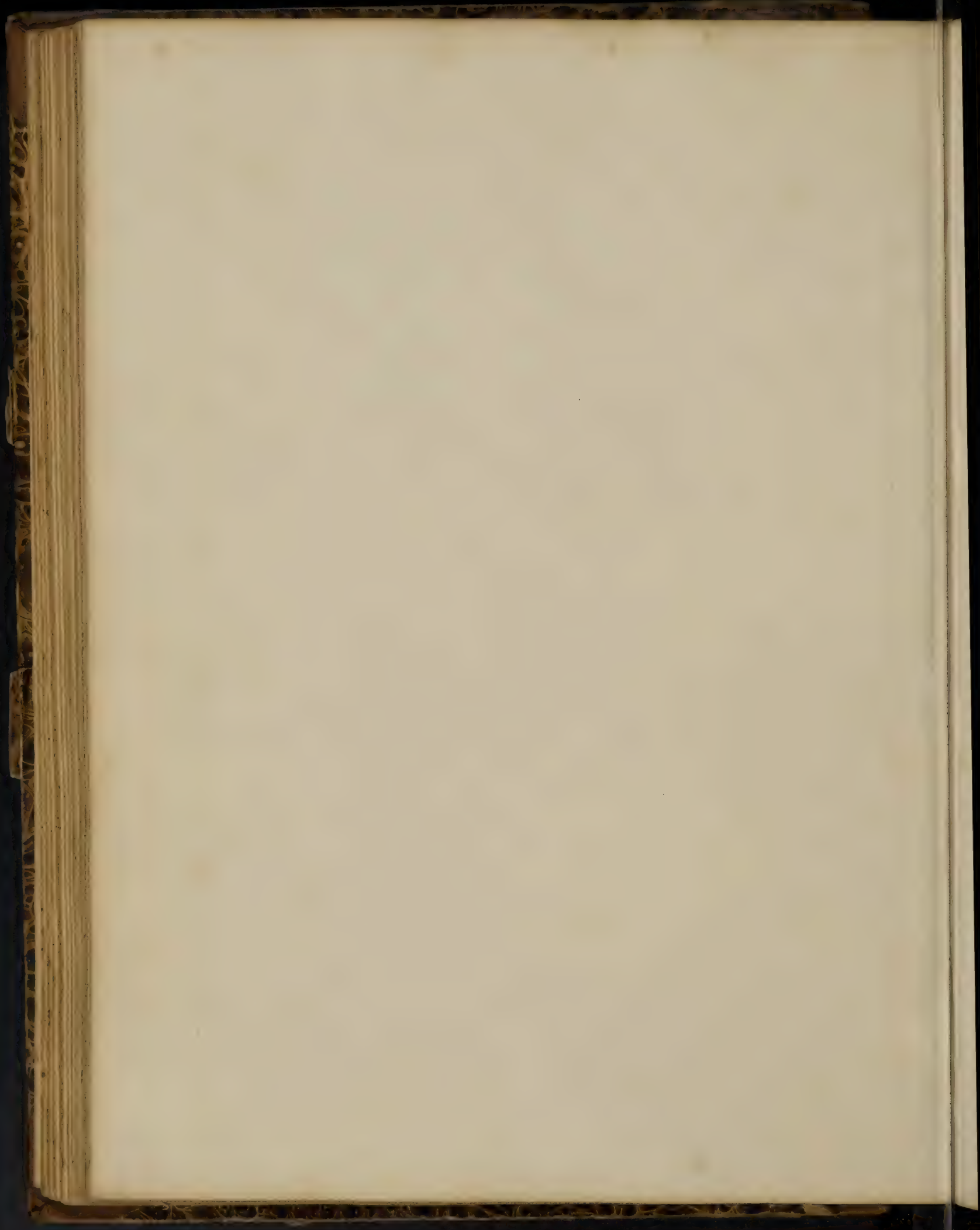
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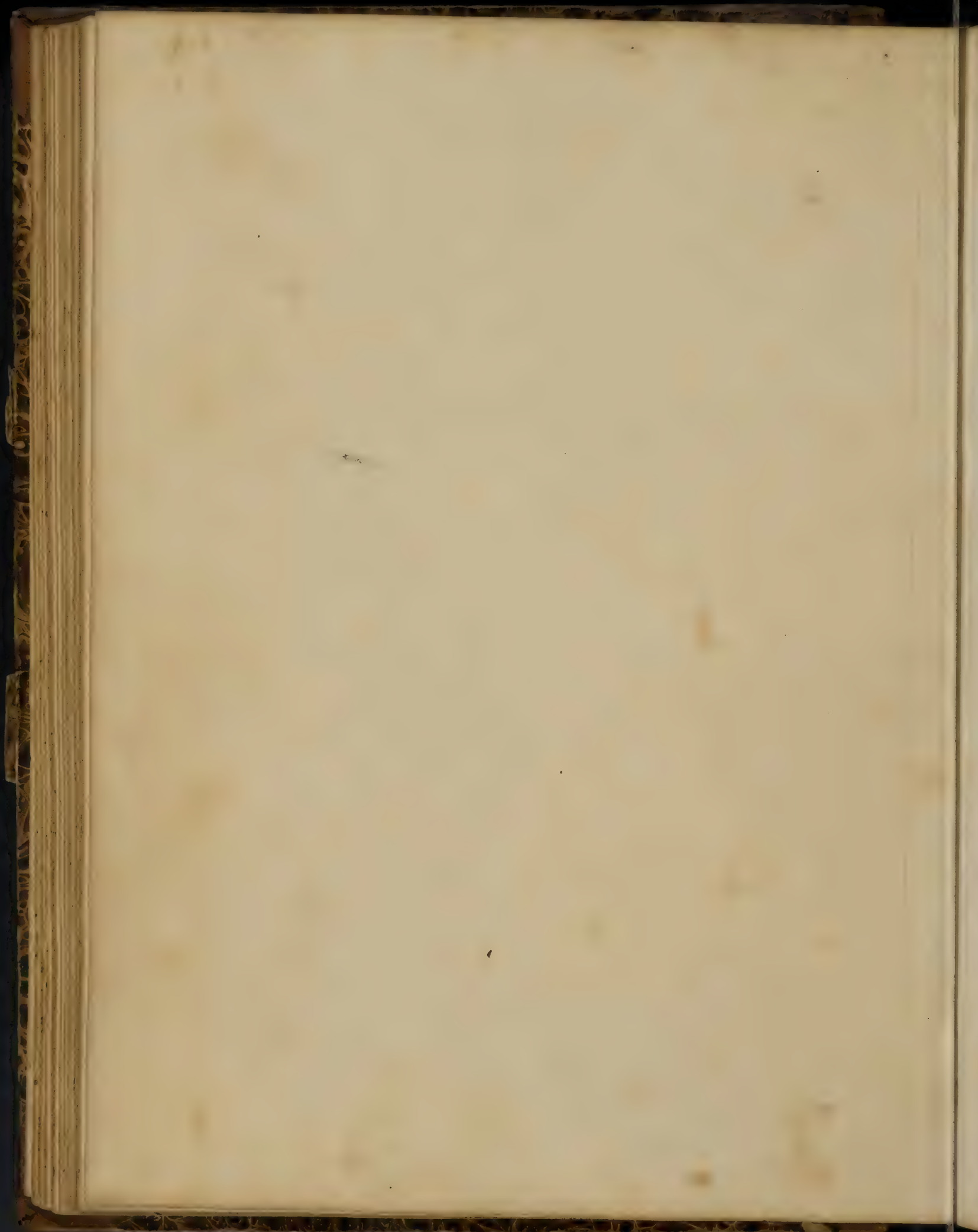
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Bills of Exchange, &c.

The law merchant has been assimilated a particular custom but it is a well custom it is likely throughout the whole country is not required to be specially pleaded.

In new cases however mercantile usages may be proved in witnesses but this is to instruct the judges for they are to consult Johnson's dictionary. *2 B. & C. 107*
3 B. & C. 107

2 B. & C. 107

1222

1 B. & C. 298

4 B. & C. 208

5 B. & C. 223

Ch. B. 21. 100

Formerly the law merchant was confined to merchants in case of bills of exchange but now it is extended to particular transactions among individuals of any class.

3 B. & C. 107

Ch. B. 11. 9

2 B. & C. 459

4 B. & C. 467

Ch. B. 11. 19

By the law merchant then is meant that unwritten code of law which governs mercantile transactions.

A Bill of exchange is an open letter of request addressed by one to another desiring the latter to pay a sum of money to A or to his order or to bearer.

4 B. & C. 173

2 B. & C. 107

Ch. B. 11

A bill if exchange may be drawn to
 18467. 'A or order' or to the order of 'A' or to
 5th Ed. 1817 'A' or bearer. or 'to bearer'
 1837
 Ch. 37. 47
 18718
 1816 40.

1873602 The usual contemplation ^{and before acceptance} of a bill of exchange
 Ch. 3. Ed. 1835 page 102. is ^{for many purposes} a signment to the payee of a debt
 due from the drawer to the drawee. for
 the drawer is always supposed to have
 funds in the hands of the drawee, & the
 drawing of a bill is not a mere authority to the
 drawee to pay to the payee.

This instrument differs from a common
 draft or order in being negotiable.
 in the latter instrument the word
 order, bearer &c are omitted - 1816
 1811 1817 1818 1819 1820 1821 1822
 1823 1824 1825 1826 1827 1828 1829 1830
 1831 1832 1833 1834 1835 1836 1837 1838 1839 1840
 1841 1842 1843 1844 1845 1846 1847 1848 1849 1850
 1851 1852 1853 1854 1855 1856 1857 1858 1859 1860
 1861 1862 1863 1864 1865 1866 1867 1868 1869 1870
 1871 1872 1873 1874 1875 1876 1877 1878 1879 1880
 1881 1882 1883 1884 1885 1886 1887 1888 1889 1890
 1891 1892 1893 1894 1895 1896 1897 1898 1899 1900

A negotiable instrument is one in
 which the legal interest may be
 assigned to a third person & this
 third person becomes a party and
 sue in his own name -

143602

75R243

Mass. 4: 6.7

107.

45R342

53R683.

This negotiable quality does not
 exist in bonds & covenants - at ex the
 rule relating to these instruments is
 that a chose in action cannot be
 assigned.

Co. Litt 232b

265a n.b.

ch 2:3. 100.

2R6C442

15R26. 62

The meaning of this rule is, that
 the legal interest in the debt created
 or secured by the bond or covenant
 be transferred. the action brought
 upon it must be in the name of
 the origl creditor.

45R341.

2R6442

ch 5:6. 100.

Hence the origl creditor at ex
 may release the debt after the
 transfer of the bond & even after
 notice to the debtor of the transfer.
 the release is from the Plf on the
 record.

75R663

ch 6

Of late Ct's have taken much pains
 to evade this rule especially in Eng
 country - In ex If a release is pleaded
 the assignee may reply that the release
 was given after assignment & notice of
 assignment to the obligor. this rule
 is according to ex principles harsh
 & inconsistent -

1 John 3411

1 John R 531.

John R 42

The contract of assignment, is now
 good at law as between the parties
 to the assignment, to the intent Salkr
 of giving the assignee an action 113
 and the assignor if he releases &c. 2 Bl 442
 and if the assignment is under seal 11 Port 373
 it is construed to contain an implied
 cov: that the assignee shall have the
 benefit of the debt & may sue in
 the name of the assignor -

In the latter case the assignee sues in od Ray 683
 cov: broken in the just in a pump 1242

There is no necessity of a deed in 3 Ke 6304
 making the assignment valid -

47 R 690

4 Jaint 32

In an action on a bond given by me
to J. J. in trust for it a debt due from
18K021 it to me may be pleaded by me
4. K'400. if sett off. & here it's interest is much
Esprer inevitable and it's of law take
notice of it. But there is going
a great war & has since been
questioned. It is breaking down the
division line between the two
parties differing. 70K 603. K. d. 100. Carth's
21. 10. 209. it is no part of the
record.

consideration

It is a rule in actions on simple contracts the plf must prove a consid^r
 1247. 2 Ban 1030 1000 1671. 1 Ban 1330. 7. R 351.

Ch. 9. Now Bills of exchange & are simple contracts & not in goods the plf need not prove the consid^r & then it is implied a consid^r in some cases & in all cases they prima facie imply a consid^r
 1248. 2 Ban 1030 1000 1671. 1 Ban 1330. 7. R 351.

1248

2 Ban 1030

1000 1671

1 Ban 1330

7. R 351

Ch. 9. 51 11

115. 30

2 Ban 1030

When however the holder claims the bill as bearer where the bill is transferable
 1523.

by delivery under suspicious circumstances 2422.

the plf must prove a consid^r paid — by himself or by some intermediate holder
 2423. 2 Ban 1030 1000 1671. 1 Ban 1330. 7. R 351.

So the bearer or indorsee may be called upon to show that

they gave value for the bill where the defl proves that he or a former holder lost or was defrauded of the instrument & vide Ch. 9. 51 11

But when the holder is named in the bill as payee or indorsee he is then not bound to prove a consid^r — for the fact that he is named shows that he gave value for the instrument & vide Ch. 9. 51 11
 2 Ban 1030 1000 1671. 1 Ban 1330. 7. R 351.

2 Ban 1030

1000 1671

1 Ban 1330

7. R 351

But an instrument intended to be a note but not coming within the st of a note does not imply any consid^r even tho' it contains the words 'value rec' & the onus lies here on the plf

53 R 512. 3 Cases 286 2 John 237. 7 John 321.

the words 'value rec' in such writing now prima facie imply a consid^r 3 John 484. Ch. 9. 51 11

0 If on settling an acc^t for goods sold
one party gives a bill of exchange for
the amt^t of the acc^t whh is not
paid & the person giving the bill is
sued on the acc^t, & not on the bill
the debt cannot dispute the acc^t.

1 B.R. 445. And in genl the Debt^r on his
23 R 71. part is not permitted to prove
1 Str 674 want of considⁿ - unless between hims^f
Ryd 276.7 & the party in immediate privity
Mauk 543 with him in any case -

2 Hunt 2. This rule is founded on the genl
ch. 9. 15. principle that it sh^d be a fraud on
Hollab 27. the bona fide holder if he could
be defeated by want of considⁿ
between prior parties -

But (it seems) that where the payee could not recover
2 Bam't & on account of want of consideration or illegality &c that the bearer or
Adolph 291. indorsee must (without notice to prior parties) prove that they gave value

It, But if the payee sues the drawer or
the indorser the his indorser the
2 Cairns 246. Debt may show that there was no
1 Esp R 119 (14). considⁿ between them the parties
Evans C.C.B. to the suit. - here is no evil arising
52. from showing want of considⁿ

But if one takes a bill after it has
become payable any prior party it
 is said may shew that he etc. no
 consid^r for it, or to shew an ~~equitable~~ ch 52 113
 equitable defence (if when the holder had 287.4
 was aware) this last qualification 32 R 83.
 however does not wait to much — 75 R 428.

Because the holder takes it under 1 Wil 230
 circumstances of suspicion — ~~it is~~ 2 R 170
~~left to you in such cases to presume~~
~~on the slightest circumstance that~~
~~the holder was aware of the equitable~~
~~defence.~~ — It can make no difference
 in this case whether the bill was
 transferred by delivery, or by indorse-
 ment.

Justice Buller says that a holder who 75 R 428.
 receives a bill under these circumstances, Kyd 282.3.
 he is liable of course to an equitable ch 114.
 defence wh^{ch} exists between ant^l prior 32 R 83.
 parties. I like this rule. it is
 much more simple & saves dispute.

Bills are of two kinds foreign & inland. Kyd 10.

A bill drawn in one of these states payable in another state is a foreign bill -- contra 5 John 375. -- circuit Ct of US Insdade v Brown. Penn 1821. 3 Kent C.

Banker checks are bills of exchange payable to bearer usually, but here sometimes to order. Ch 16. 17. 171. 100. 72 R 423. These are of course then negotiable formerly thought otherwise 3 Burr 1517, ch 16. 171.

Such checks are genlly payable on demand. of course they are not payable on des until demand made & if they are not presented in reasonable time ~~the drawer fails.~~ the holder bears the loss. 72 R 423. ch 16. 44: 5. Kyd 41: 2. 1 Bl R. 1. Ed Raym 744.

Such checks may be declared on as bills of exchange. but it is said they are not liable to a protest; if the check is a foreign one I cannot see why a protest w? not be proper. 3 Burr 1517. 1519. 72 R 423. 3 John 65.

Such checks in mercantile usage are
treated as cash - yet they are also
treated as choses in action.

7. R 422. Long 135. 20 R 1174. 2 R 171

What is a reasonable time?

This was formerly considered as a mixed
question of fact to be determined
by the jury in each case, but this
was found too loose, - now in the
first instance it is a mixed question
the jury must find the distance, the
the convenience, for convenience &c. & the 415.586
the facts being ascertained the 410. 1175
question is a question of law. the 1241.
It directs the jury that if they Deans 412
find the facts thus & thus they Deans 412
must find that the check was presented
in reasonable time &c., &c.

Parties

the persons in gene having capacity
to contract may be parties to a bill
of exchange Chth 183. Ch 19. Comb 152.
Stute 192. 1. Lark 175. 12. Alled 36. 310.

1. Atk 111. A corp^r may by its agent become
2. Bur 146. party to a bill of exchange. but in
no other way - A corp^r itself can
do nothing but pass a vote -

If a bill is drawn, accepted or
indorsed by a person incapable of
binding himself it will still be
binding as to other parties. If
Feme chor^r draws a bill the indorser
is liable. He draws a new bill on
the drawee 2. Atk 112. Ch 19.

A person may become drawer or acceptor by his agent as well as by his own act. 12 Colld 34c. 56c. 9c. 75. 6. L. R. 130. 130.
In such case the party is said to become party by procuration Ch. 24. any individual may act as agent for this purpose - since it is a ministerial act. Infants. Curatels. 12 Colld 52. Ch. 24.

And agent may be constituted for this purpose, with power of atty.

On the other hand an agent cannot execute a deed for another without a power of atty. in deed. for a man cannot sign himself except by deed.

An agent acting under a general authority may bind his principal to any extent. but a special agent can bind the principal only to the extent of the special authority. 3c R 75. 1st B. 155
2d B. 61. 6c R 59. 1 Exp R 111.

On mercantile usage a person signing
his name on blank paper and delivering
it to another authorizes the latter to
fill it up with a bill to any amt
404
404 313.

But they does not apply to deeds
deed takes effect as intended. Trades
here is only an implied authority.
Shepp 354. Park § 111 4 Cruise 926.

The agent who always act in the name
of his principal if he executes in his
own name he alone will be bound.

1136 & his atty is the best mode
straps 100 R 71. Comyn Dig atty C14. 100 R 111
1136 1136 1136 1136 1136 1136 1136 1136 1136 1136

One of the pt trading may in accepting
a bill in the name of the firm bind
the firm provided it is given to
decide a joint debt or.
He acts as agent

112. 100

Peake R 11

Bac 46

Merch: C

112. 100

It is s. that the act of one tho in
the name of the firm will not
bind the firm if the bill is given
for the benefit of the one drawing

If one of the partners contracts a debt
 properly on his own acct & to secure
 it gives a bill in the name of the
 firm. If the party who does know that
 the bill was given for the separate
 acct of one of them he cannot recover
 of the firm but otherwise he may
 recover. Term 27. 192. Exp & 524. See also
 ChB 28.

But of late it has been held, that if a bill is drawn on a firm and accepted
 by one in his own sole name or in
 the sole name of the other partner
 the firm is bound. - the acceptance
 was held to follow the nature of the
 bill, & to be construed by it.

Again it is held that two persons by
1145 253 making a bill payable to their own
Long 653 order make themselves quoad hoc
Kakik 16 partners, so that one may indorse
Ch 29 on the bill - no question

A bill drawn on a corporation may
be accepted by their agent only Ch 29
Ch 29

There is nothing in your volume which says
this.

1145 253 Long 653 Kakik 16 Ch 29

Bills of Exchange (182)

Following instruments are construed with
great liberality. 2d form of note is
necessary. Common Dig. 100. 112. 113. 114. 115.
3 Wils. 213. 114. 115. 116. 117. 118. 119. 120.
One can see 100. 112. 113. 114. 115. 116. 117. 118. 119. 120.

Contracting parties are indispensable until 1731, 1732
and it is not an instrument but mere evidence
of a parcel contract. 20 Ray 1545

The word instrument has an appropriate
signification & means a writing which
if it constitute a ground of action
or defence & is counted upon as such
in pleading. But a writing not an
instrument is merely evidence of something
else & is never counted upon or pleaded

A Bill of Exchange or promissory note
having the requisites is an instrument
& may be counted on. But without
the requisites it carries with it no
evidence of consideration & is not negotiable
& is not a bill of exchange (on this
last point however vide post) According
to the weight of authority such writing
may be declared on as a bill as a
bill of exchange as between the right
parties. 1 Ch. 113. 2 B. & P. 112 contra 2 Camp. 125
+ Ch. Bill. Ed. 1835 page 5 contra,
3 Wils. 211. 2 B. & P. 1072. Bayley's. contra! Kyd 65.

These requisites are two. 1st that
the bill be payable at all events
& not on contingency —

3 Will 211 2^{dly} that it be payable in money

2 Blk 102 only

5 CR 415.

7 CR 241.

14 Bl 239.

Ch 32

Ry d 50

If then the bill is payable on an
event which may never happen it is
3 Will 213 no bill of exchange.

1 Burr 325

Ch 115.

Ry d 50.

Ch 32:3

So if it is payable out of a particular
fund which may or may not ever be
productive the bill must import
credit to the drawer & not credit
to a particular fund. See Ray 1302
1390. 1503. 11 Bl 151. 7 CR 242. 5 CR 482
4 CR 343. 13 CR 702. Ry d 512. 3 Will 207

When the event on which the bill is payable is of not certain, morally certain & one which concerns trade the bill is a good bill & exchanged - by a bill drawn payable one month after a ship is laid off. -

11 May 162
Ball 272
Ky d 57.

But again if the event is one which must inevitably happen at some future time the bill may be good enough. By at the death of A. or when B. attains a certain age naming the time when this age will arrive for example the bill will be payable tho' A. B. should die to day.

Bum 226
Stra 127
Ky d 57
Ch 35.4

The mention of a fund in a bill does not operate to make the payment dependent on the productivity of the fund. By if it is known to draw the drawer out of all right & fund to reimburse himself - in short the mention of the fund does not vitiate if the bill imports a personal credit to the drawer & not a credit to a particular fund -

Lo Ray 145
Ch 333

2^d payable in money only. Ryd 50. ch 34
for these bills were devised to facilitate
remittances - Stra Ryd ch 35. Stra 287

Mr. J. P. St. in 1811 determined that a
bill payable in ch^d in current bank
bills of that city, is a good bill of
exchange - I. G. thinks the determination
right. bank notes at par are cash
to almost every purchaser. J. John 120.
4 ellab 245.

A writing wanting either of these
requisites may be used as evidence
of a contract between the orig^l
parties tho it is not a bill of
exchange. 2 Bl K 1072. Ryd 58. 15.

ch 46. In the case of foreign bills it is usual
Bailey 15 to draw three to prevent the consequences
of loss - but here to prevent the 'dramas'
paying each of them they each count
upon the other - as 'second & third
of the same tenor & date being unpaid'

The bill must point out some person to whom it is to be paid or to bearer &c. It has been said that if no payee 14 Bl 688 is mentioned & not payable to bearer & the bill mentions from whom the value is rec^d it is payable to that person from whom the value is rec^d. (vide Ch 82 11 & 2 vol 90.) (vide 5 Count 59 & Ch 82).

A Bill payable to a fictitious payee or order is as payable to bearer wth all who knew that the payee was fictitious at Comyn C 293:4. the time when they became parties 32 R 174 but unless they knew it the bill wth them is of no effect. for they might 112 481 be defrauded they might have taken it 14 B 313 & indorsed it on the credit of the 564 fictitious payee 2 D 194 288 Ch 47:8. 59. 61. 209 202. 1 Camb 130

Such bills are however strongly censured. - (H.)

1841. The bill must contain
 particular words of transfer, as in a
 bill to a third party who is
 equivalent to a bill to the
 transfer 200. 184. 187. 188. 189. 190. 191. 192. 193. 194. 195. 196. 197. 198. 199. 200.
 1841. — 'Co of a man' to the order
 of 'Co' are the same thing in effect.
 1841. 184. 185. 186. 187. 188. 189. 190. 191. 192. 193. 194. 195. 196. 197. 198. 199. 200.
 1841. 184. 185. 186. 187. 188. 189. 190. 191. 192. 193. 194. 195. 196. 197. 198. 199. 200.

Bills of exchange usually contain
 the words 'value in full' but these words
 are unnecessary, a consideration is implied
 with the terms, see Raym. 411. 1841. 184. 185. 186. 187. 188. 189. 190. 191. 192. 193. 194. 195. 196. 197. 198. 199. 200.

1841. 184. 185. 186. 187. 188. 189. 190. 191. 192. 193. 194. 195. 196. 197. 198. 199. 200.
 1841. 184. 185. 186. 187. 188. 189. 190. 191. 192. 193. 194. 195. 196. 197. 198. 199. 200.
 1841. 184. 185. 186. 187. 188. 189. 190. 191. 192. 193. 194. 195. 196. 197. 198. 199. 200.

1841. 184. 185. 186. 187. 188. 189. 190. 191. 192. 193. 194. 195. 196. 197. 198. 199. 200.
 1841. 184. 185. 186. 187. 188. 189. 190. 191. 192. 193. 194. 195. 196. 197. 198. 199. 200.
 1841. 184. 185. 186. 187. 188. 189. 190. 191. 192. 193. 194. 195. 196. 197. 198. 199. 200.

When a bill is drawn for a debt actually due the debt must be paid to the assignee & the assignee is entitled of course to the whole of the debt.

Illegal considⁿ

In all cases in which the debt can give the want of considⁿ he may. 1 B & R 445
 of course over the illegality of the ch 52
 considⁿ as between parties in Long 614.
 immediate privity - & where a bill 636.
 is taken when overdue. Ex of first Ry 280.
 payee ag^t drawer or acceptor.

And a subseq^t holder who knew the 6 & R 61
 illegality of the considⁿ at the time Ex R 166.
 of taking the bill cannot recover. Ch B 52.

28. But in good and lawful trade holders
having no notice of the illegality
may recover on it. Hyd. Long 614
263. 13R 800. 300. 83R 35R 390. 454. 537
70R 607. Stra 1155.

Long 646 But when statute law has declared
a bill to be void it is said there
2 HB 647 is an exception to the above genl
Stra 1155. rule. but this is wrong - the
Smith 356 exception is thus where stat law
1 East 42. has declared a bill to be void for
10 R 274 the protection of one the parties
no holder can recover agt him,
Ex none can recover agt the party
giving usurious interest. So money
unlawfully won at gaming none can
recover agt the loser (the drawer)
nor of course agt the acceptor for
the acceptor pays the drawer's money.
for to require in these cases to
destroy the effect of the statute.

And in the latter case the bona fide holder may recover agt any party for whose protection the Stat was not intended. & an indorsee may recover agt the usurer if he has indorsed on the bill. —

Stru 1155
 Doug 1.6
 2 Pl 22.
 Talk 344.
 Follot 175.
 4 Clap 1.
 614anch 224

Suppose the indorsee had notice of the usury, still he can recover agt the usurer —

If the origl bill is forged still the person indorsing it over is bound for the indorsee & it over is a new contract.

It says the holder can recover agt the party from whom he immediately got it but he cannot object to the doctrine.

If a bill which is good in its creation is indorsed over on loan usurious consideration a bona fide holder may recover agt the drawer or acceptor the not agt the usurer. — The usurious indorser can not recover agt any one —

1 East 92
 Ch 53.4
 16 Pl 173
 10 R 395
 8 d 1032.
 2 Comth 72
 104 d. Tech. 3

In genl the contract is construed
according to the law of the place
where the contract was made

2 Stra 733. 1 B & P 141. 2 4 Bl 603. Comp 174
Burr 1077. 7 JR 242. 2 East 453.

ch 59. There is however an exception to this
Raines 251. genl rule with regard to the time of
Kyds. payment that is genlly construed
by the law of the place where the bill
is payable - for tho the nature &
extent of the contract are properly
construed in reference to the place
where the contract is made yet the
time & manner of performance are
properly determined by the law of
the place where it is to be performed

31
7 JR 48. Nature, construction & legal effect are
1 East 656 determined by the lex loci contracting
5 Trauch 198. the mode of enforcing the right. such
302. as the procep. the form of the action.
2 Bl R 164 the mode of pleading &c are determined
1 B & P 138. by the lex fori.
2 John 195. -
11 John 194
3 Conn 525.

Where a person receives a bill on acct
of a former debt for which he has
no higher security he cannot in genl
sue for the origl debt before the
bill has become payable - for by
receiving a bill payable in future he
tacitly agrees to prolong the credit.
12 Cld 547. Ch Br. 63R 52. 73R 64. 1 EspR 5.
106. 53R 513. Salk 442.

If a bill is altered while in the
hands of any holder, without the
drawer's consent the drawer is discharged
even in favour of a bona fide
holder - The alteration must be
material as in date sum &c.
43R 320. 53R 367. 2 H Bl 141. Ch Br. 3.

Ch Bill 100g
ed. of 1835

It is the policy of the law merchant
to protect bona fide holders but it
cannot carry this policy so far as to
make a forged instrument good -

Neither can a recovery be had agt
the acceptor nor agt any one who
indorsed it before the alteration.

But if accepted after alteration
a recovery may be had agt the
acceptor 16 Cld 194. (Beans pl 194. Ch Br. 3.)
by a bona fide holder -

But the party making the alteration
can in no case recover.

If the alteration be the unauthorized act of a stranger
does it vitiate the bill? See not Ch B 1009 & note, 5 Taunt. 707
9 East 555. 1 B & B 430. 2 B & A 757. 10 Conn. R 192.

The drawer by the act of drawing
and giving out the bill comes
under an implied engagement that
the drawee is capable of accepting
the bill & that if a place is
named that the acceptor may
then be found that the acceptor
will accept the bill according
to the tenor when duly presented
& finally that on due presentment
for payment the drawee will pay
the bill - Dory 55. 2 A R 578.
1 Esp R 511. Tra 1017. Ch 334 702 Kyd 109.

The same implied undertaking is
entered into by each indorser to
his indorsee & to every subsequent con-
fide holder. 3 East 481. Bellas 559.
4 John 144 -

No such engagement is implied
when the party or receiver expressly
agrees to assume all risks -

+ And again the genl rule does not apply but agt a person who transfers a bill on a mere discount - i.e. agt one who merely delivers over a bill without indorsement for a sum of money advanced by the way of purchasing it. Ch 83, 180. 119. 124. 125. 37 R 77. 78. 79. 80. 81. 82. 83. 84. 85. 86. 87. 88. 89. 90. 91. 92. 93. 94. 95. 96. 97. 98. 99. 100. 101. 102. 103. 104. 105. 106. 107. 108. 109. 110. 111. 112. 113. 114. 115. 116. 117. 118. 119. 120. 121. 122. 123. 124. 125. 126. 127. 128. 129. 130. 131. 132. 133. 134. 135. 136. 137. 138. 139. 140. 141. 142. 143. 144. 145. 146. 147. 148. 149. 150. 151. 152. 153. 154. 155. 156. 157. 158. 159. 160. 161. 162. 163. 164. 165. 166. 167. 168. 169. 170. 171. 172. 173. 174. 175. 176. 177. 178. 179. 180. 181. 182. 183. 184. 185. 186. 187. 188. 189. 190. 191. 192. 193. 194. 195. 196. 197. 198. 199. 200. 201. 202. 203. 204. 205. 206. 207. 208. 209. 210. 211. 212. 213. 214. 215. 216. 217. 218. 219. 220. 221. 222. 223. 224. 225. 226. 227. 228. 229. 230. 231. 232. 233. 234. 235. 236. 237. 238. 239. 240. 241. 242. 243. 244. 245. 246. 247. 248. 249. 250. 251. 252. 253. 254. 255. 256. 257. 258. 259. 260. 261. 262. 263. 264. 265. 266. 267. 268. 269. 270. 271. 272. 273. 274. 275. 276. 277. 278. 279. 280. 281. 282. 283. 284. 285. 286. 287. 288. 289. 290. 291. 292. 293. 294. 295. 296. 297. 298. 299. 300. 301. 302. 303. 304. 305. 306. 307. 308. 309. 310. 311. 312. 313. 314. 315. 316. 317. 318. 319. 320. 321. 322. 323. 324. 325. 326. 327. 328. 329. 330. 331. 332. 333. 334. 335. 336. 337. 338. 339. 340. 341. 342. 343. 344. 345. 346. 347. 348. 349. 350. 351. 352. 353. 354. 355. 356. 357. 358. 359. 360. 361. 362. 363. 364. 365. 366. 367. 368. 369. 370. 371. 372. 373. 374. 375. 376. 377. 378. 379. 380. 381. 382. 383. 384. 385. 386. 387. 388. 389. 390. 391. 392. 393. 394. 395. 396. 397. 398. 399. 400. 401. 402. 403. 404. 405. 406. 407. 408. 409. 410. 411. 412. 413. 414. 415. 416. 417. 418. 419. 420. 421. 422. 423. 424. 425. 426. 427. 428. 429. 430. 431. 432. 433. 434. 435. 436. 437. 438. 439. 440. 441. 442. 443. 444. 445. 446. 447. 448. 449. 450. 451. 452. 453. 454. 455. 456. 457. 458. 459. 460. 461. 462. 463. 464. 465. 466. 467. 468. 469. 470. 471. 472. 473. 474. 475. 476. 477. 478. 479. 480. 481. 482. 483. 484. 485. 486. 487. 488. 489. 490. 491. 492. 493. 494. 495. 496. 497. 498. 499. 500. 501. 502. 503. 504. 505. 506. 507. 508. 509. 510. 511. 512. 513. 514. 515. 516. 517. 518. 519. 520. 521. 522. 523. 524. 525. 526. 527. 528. 529. 530. 531. 532. 533. 534. 535. 536. 537. 538. 539. 540. 541. 542. 543. 544. 545. 546. 547. 548. 549. 550. 551. 552. 553. 554. 555. 556. 557. 558. 559. 560. 561. 562. 563. 564. 565. 566. 567. 568. 569. 570. 571. 572. 573. 574. 575. 576. 577. 578. 579. 580. 581. 582. 583. 584. 585. 586. 587. 588. 589. 590. 591. 592. 593. 594. 595. 596. 597. 598. 599. 600. 601. 602. 603. 604. 605. 606. 607. 608. 609. 610. 611. 612. 613. 614. 615. 616. 617. 618. 619. 620. 621. 622. 623. 624. 625. 626. 627. 628. 629. 630. 631. 632. 633. 634. 635. 636. 637. 638. 639. 640. 641. 642. 643. 644. 645. 646. 647. 648. 649. 650. 651. 652. 653. 654. 655. 656. 657. 658. 659. 660. 661. 662. 663. 664. 665. 666. 667. 668. 669. 670. 671. 672. 673. 674. 675. 676. 677. 678. 679. 680. 681. 682. 683. 684. 685. 686. 687. 688. 689. 690. 691. 692. 693. 694. 695. 696. 697. 698. 699. 700. 701. 702. 703. 704. 705. 706. 707. 708. 709. 710. 711. 712. 713. 714. 715. 716. 717. 718. 719. 720. 721. 722. 723. 724. 725. 726. 727. 728. 729. 730. 731. 732. 733. 734. 735. 736. 737. 738. 739. 740. 741. 742. 743. 744. 745. 746. 747. 748. 749. 750. 751. 752. 753. 754. 755. 756. 757. 758. 759. 760. 761. 762. 763. 764. 765. 766. 767. 768. 769. 770. 771. 772. 773. 774. 775. 776. 777. 778. 779. 780. 781. 782. 783. 784. 785. 786. 787. 788. 789. 790. 791. 792. 793. 794. 795. 796. 797. 798. 799. 800. 801. 802. 803. 804. 805. 806. 807. 808. 809. 810. 811. 812. 813. 814. 815. 816. 817. 818. 819. 820. 821. 822. 823. 824. 825. 826. 827. 828. 829. 830. 831. 832. 833. 834. 835. 836. 837. 838. 839. 840. 841. 842. 843. 844. 845. 846. 847. 848. 849. 850. 851. 852. 853. 854. 855. 856. 857. 858. 859. 860. 861. 862. 863. 864. 865. 866. 867. 868. 869. 870. 871. 872. 873. 874. 875. 876. 877. 878. 879. 880. 881. 882. 883. 884. 885. 886. 887. 888. 889. 890. 891. 892. 893. 894. 895. 896. 897. 898. 899. 900. 901. 902. 903. 904. 905. 906. 907. 908. 909. 910. 911. 912. 913. 914. 915. 916. 917. 918. 919. 920. 921. 922. 923. 924. 925. 926. 927. 928. 929. 930. 931. 932. 933. 934. 935. 936. 937. 938. 939. 940. 941. 942. 943. 944. 945. 946. 947. 948. 949. 950. 951. 952. 953. 954. 955. 956. 957. 958. 959. 960. 961. 962. 963. 964. 965. 966. 967. 968. 969. 970. 971. 972. 973. 974. 975. 976. 977. 978. 979. 980. 981. 982. 983. 984. 985. 986. 987. 988. 989. 990. 991. 992. 993. 994. 995. 996. 997. 998. 999. 1000.

But if the holder transfers a bill for a 109
a debt which is due from him & day 3. R 757
not indorse it & the bill is not 109 R 447
paid, the seller of the bill is still 7 R 65. 6.
liable for the origl debt. 109 R 90:1

And in case of transfer of a bill for a previous debt without 109 R 128
indorsement it seems the person transferring may be liable for the debt 15 East 7
where the bill is not paid altho the person receiving the bill did not present it
for payment & gave notice of dishonor of the person transferring & present it
for payment of the bill is an indorsement. Ch 123:4
indorser is always liable but if 109
there is no indorsement, Caveat.
emptor. applies —

When there is a failure in any
of these implied undertakings the
drawer is immediately become liable
even tho' the day of payment has
not arrived. Doug 55. 3 Bln 1087.

1 Bln 669. Bull 269. 9 R 52. 139. 3 Wils 107
3 East 481. 3 Alls 557. 4 John 144.

In some cases it is necessary & in most cases expedient for the holder to present the bill for acceptance.

Regt 117 when the bill is payable within a limited time after sight or request presentment is of course necessary not if payable on sight or on one of the days of grace.

Regt 112 But in some cases it is necessary to present the bill for acceptance
Regt 114.

20K 717 and when it is otherwise necessary to present for acceptance it may be dispensed with if it can be proved that the drawer or indorser has no effects in the hands of the drawer or if he can prove any fact which shows that the drawer was not induced by non presentment.

2 ABLS 64 The rule as to time of presentment
73K 415 when presentment for acceptance is necessary is that the holder should use due diligence to present in a reasonable time.

whether a bill payable at sight is
to be presented for acceptance depends
upon the fact whether days of grace
are or are not allowed. Chb. L.

Presentment for this purpose as for payment
should be within the usual hours of
business. Ryd 125. Ch. 145.

It has been s^d that the drawer must
immediately on presentment for acceptance
accept or refuse. Common Digest. But the
drawer must be allowed some time. 2d Ray 281.
and now it is usual to leave the Ryd 126.
bill 24 hours with the drawer & if Ch. 10. 2.
when the bill is then left if it is Beaum. 17
not accepted within the 24 hours
the holder may consider it as
dishonoured.

2d Ray 743
15th R 516.
Ch. 10. 19.
118. 126.
Ryd 125. 7

15pK511
ch 70 If the drawer has never removed from
the place described presentment sh^d
be made at the new place if at all

But if the drawer with absconding
has gone out of the state the holder
is not bound to follow him if he
has left a house demand sh^d be
made at his house if he has left
none the bill is dishonoured of course

ch 70:1 If drawer is dead presentment
132 136 should be made to his personal
representative,

Acceptance is the act of engaging
to comply with the request of the
bill. and a presentment by paid
will bind the acceptor. ch 71. 75. 6.
200.

signature of the drawer, authorized agent will bind the drawer but unless the agent will present his authority the holder is not bound to accept the acceptance of the agent.

And I think it doubtful whether the holder is bound in any case to receive an acceptance by the agent.
Ch. 3. 71:2. 1 Ex R 115. 209.

If the drawer is found to be an infant, feme covert or otherwise legally incapable of making a valid acceptance the holder may treat the bill as dishonored Ch. 3. 71:2.

I promise to accept at a future time whatever, in some cases, as an acceptance in present - Ex leave the 3 Bankers bill and I will accept it. 5 East 114.

And a person may bind himself by
 a promise to accept a bill to be
 drawn in future & then the promise
 operates as an acceptance - this
 rule holds when the promise was
 attended by circumstances which
 induced the payee or holder to
 take the bill

Comp 571
 573:4.
 East 42.
 2 Binn 1803.
 Ryd 74.
 108th 715.
 611.

12 Collo 410. And an acceptance after the day
 of payment will bind the acceptor
 tho in this case the drawer &
 indorsers are discharged unless they
 were duly notified of non acceptance
 or of non payment at the day.

Ch 73:4.
 51.

An acceptance made after the day of
 payment binds the acceptor to pay
 immediately. 2d Raym 304. 574.
 Carth 45. 12 Collo 410. Comp 715.

27/ Where there is a system of bankrupt laws the drawee is not liable in accepting after he knows of the bankruptcy of the drawer - but if he accepts before notice he may safely pay for the bill & protects him in paying. 2 HBL 534 55 R 711. Ch 74. 151: 2.

An acceptance may be absolute conditional or partial but the holder is not bound to accept any but an absolute acceptance & may treat the bill as dishonoured unless the acceptance is absolute.

If however the holder chooses to receive an acceptance varying from the above & if he gives notice to the other parties of the nature of the acceptance they will not be discharged.

Sta 214

648. 1194

1112

2 Will 4

13 R 102

Ch 74: 5

74: 51

15 R M. v.
ch 75

What constitutes an acceptance is a question of law.

ch 73.5
Comb 401.
Ball 270.
ch 76.
hyd 30.

An absolute acceptance is an assent to pay the bill according to the tenor. The usual form of a written acceptance is by writing 'accepted' & signed by the acceptor or his agent &c. so the words 'accepted' of the name by the drawer or his agent, or 'accepted' written but not signed is an acceptance. & indeed any act signifying an intention to accept is an acceptance. —

As to verbal acceptance. 14 R. 1055. 1 Esp R. 102
3 B. & M. 1674. 10 R. 1055. 2 Wils. 9. 1 East 103. 4 D. 72
And this rule holds, tho' there is no consideration for the acceptance as between the drawer holder & acceptor.

A promise to accept obtained by fraud does not bind the acceptor in favour of the person procuring the promise tho' if the acceptor must bind in favour of a bona fide holder. 3 B. & M. 1669.
ch 77.

Bills of Exchange (No 3).

if written acceptance need not be on the bill. *Stea 68. Ryd 19.*

and there may be an implied accept-
ance but to constitute such an one *16th 17*
there must be some act or circumstance *Ch 7.*
from which it can be inferred that the *1. 1864*
holder was induced to believe that *Hard 75*
the bill was accepted. if there is
your bill all is right.

again an acceptance may be implied *10th 16.*
from the drawer's keeping the bill an *Ch 77. 4.*
unreasonable time *Hard 278.*

and indeed any act of the drawer *Bull 270*
which gives credit to the bill & prevents *Ryd 10*
the holder from sending notice of dishonour *Ch 77.*
is an implied acceptance.

A conditional acceptance is an agreement to pay the bill on a contingency & if the holder receives such acceptance he must give notice to the other party or they will be discharged
Lyt 161
Ch 23.
74: 57: 9
103. 180.

* If then the drawer writes thus accepted if remitted for. or accepted on acc^t of such a ship when in cash for such a cargo. this is cond^t. Stra 1152. 1212. 2 Wils. 67. Comp 571. 15 R 182. 12 Mod 447
Ch 20: 30. 6 Can & P 218. when some in fav^r of the fund the bill shall be paid but to have acceptance the biller gives notice of dishon^r.

A cond^t acceptance if not becomes absolute of course as soon as the contingency happens. Stra 212. Comp 571. 15 R 182. Ch 20: 1. 101: 2.

Where the drawer accepts in writing the cond^t if any is intended must also be written - otherwise the cond^t will not avail the acceptor ag^t a subseq^t bona fide holder - with notice.
Long 186: 96
Ch 10: 1.
Hardk 112: 3

Such a cond^t is however binding as between the parties to it its invalidity is not founded on the superior solemnity of writing. as ag^t a subseq^t holder.

But if the subseqt holder gave no value or had actual notice of the condⁿ he can not recover unless the contingency has happened.

But if any intermediate holder gave value & had no notice the subseqt holder may then take the place of this intermediate holder.

a partial acceptance is absolute str 214
but diff^t from the tenor of the bill Comb 452
as to pay at a diff^t time, or a diff^t 1101 & 190
sum. or part in money & part in goods str 1194.
ch 81.

The holder may refuse such an acceptⁿ
and treat the bill as dishonored.

Where the acceptance is partial if the holder does not intend to discharge the prior parties he must give notice of the nature of the acceptance if he accepts the acceptance or if he refuses he must give notice of non acceptance.

10 R 111 He gives notice that the bill is
10 R 112 dishonored ^{by} he cannot after-
10 R 113 wards take advantage of the partial
10 R 114 acceptance, vide 6 Ant 218.

10 R 115 Whether an acceptance is partial or
is a question of law.

10 R 116 An acceptance is binding in favor
30 R 117 of a third person as payee indorse
40 R 118 the note consider moving to the
drawee & the this fact is known
to the payee &c

2 H R 119 Hence an acceptance by the Ex'r of
3 Wyl 1 the drawee is an admission of apptg
2 H R 120 and will bind the Ex'r who has
2 B R 121 no apptg.
10 R 122

And the same rule holds of an
indorsement of an Ex'r.

The obligⁿ of an acceptance is
 irrevocable but if acceptance is
 made in a foreign country by the law *Stray 733*
 of wh^{ch} it becomes invalid in that *Ch 57.00*
 a certain event or that event's happen^g & 13
 ing it becomes invalid here.

This obligⁿ may be waived of course
 by the holder, with deed or writing *Doug 236*
 by bare parol agent. - this is not *247*
 in gene true of contracts at C. & *Exp 47*
 the rule is founded on the equity *Ch 13. 107*
 of the law merchant. in equity *Ch 13. 107*

Send a message sent by the holder *Doug 236*
 to the acceptor that the affair, *or 246.*
 was done with was held a discharge *Ch 84.*
 to the acceptor. and the rule w^h
 has been the same in this case had
 the acceptance been for value & not
 an accommodation-acceptance.

across the holder's name, part of -
the bill from the drawer & takes the
drawer's promise on the back of the
bill for payment at an enlarged
time.

The acceptor on these facts
cannot be discharged - the liability
of the acceptor is primary - this
transaction with the drawer is for
the advantage of the acceptor &
subjects him to no hardship or
danger.

An alteration by the holder of a partial
into an absolute acceptance & then on
the drawer's refusal to pay, an alteration
back to the original partial acceptance
is no distinction of the bill & the
acceptor was held not to be discharged.

It thinks this wrong. the holder in
the first place materially altered
the acceptance which is forged -
but when acceptance is written on
the bill not the drawer's it is the
acceptance of the holder with the
authority of the acceptor.

The drawer is then obliged to the drawee in such case where the prospect of profit on the note, is the consideration of the acceptance. If the holder takes the bill of lading in discharge the acceptor.

The act of acceptance, when the terms of it import nothing to the contrary, imply 1 Wils. 115. 7 that the acceptor is indebted to the holder. 130. Between the drawer & the acceptor & as Beal's 457 between the drawer & acceptor it is prima facie evidence & the drawer may sue the acceptor on the bill when the drawer has been compelled to pay.

And in this case if the acceptor pays Ryd 150 the bill he may recover from the drawer if he can prove that he did not owe the drawer. 203. 5 1 Wils. 137. 20.

If the holder makes the acceptor his debtor he is discharged & also the indorser & 2 B. 11. 12 & the acceptor is discharged - the acceptor's liability is primary & what discharges him discharges them all.

5 R 1670 When on presentment for acceptance
13 R 712 the drawer refuses to accept or accepts
Dong 658 partially so Notice must be given
Ryph 100 to all the parties by the holder
Ch 54 654 that they make provision for their
own security according to their priorities
If notice is not given in such he
1 R 4009 who had no notice is discharged.
2 R 182 The rule formerly was that the party
2 H B L 62 insisting on want of notice must
Ryph 129 prove actual damage from the want
Ch 87 191 of notice, but now the presumption
103 208 is in favour of their having sustained
132:3 damage, now therefore the holder must
prove that no damage is sustained by
the deft. & that he is not exposed to
any damage.

1 R 405 If from the date of the bill to the
712 time of payment the drawer has
2 R 713 effects in the hands of the drawee
2 H B L 610 the drawer is prima facie unimpaired
1 B 4052 by want of notice. In this case it
3 Do 230 is presumed that the drawer knew that
5 R 230 his bill was & it is discharged
1 R 333
7 Do 515 The holder takes the loss
581
3 E P R 158

But if the draw had in fact effected
in the hands of the drawer this affords no
incontestable presumption of damage. Still
and the admitted fact is no actual
damage will not in such case require
want of notice.

And with regard to a promissory note
it has been held that the party
indorsing it with a knowledge of
the maker's insolvency the indorsing
continuing to the time of payment
from the date is not in itself
notice of non payment by the maker.
This decision is not recorded in
Engl. the it has been so considered
in this country and in this country
the decision has been denied.
But I think the English rule
correct.

24 B. 52.
1 K. 411.
12 B. 302
103 p.
Lake R. 202
24 B. 529
B. 117
7 East 359
2 Com. 110.
2 B. 117
4 B. 117
10 B. 117
2 B. 117
10 Com. 117

1812 If the indorser has effects in the drawer's
 hand but if the drawer has none
 the drawer is not on that acct.
 entitled to notice 1 Cr R 575. Call
 If however the drawer has effects
 in the hands of the drawer at
 the time of drawing he cannot
 dispense with notice
 1 Cr 428. tho' no damage c^d have accrued
 2 Cr 330 from want of notice - So introduce
 2 H Bl 612 exceptions to this rule w^o create
 7 East 359 needless uncertainty. *proving*
 1 Cr 334 (w^o *proving*)

Precisely the same rule holds in
 favour of the indorser, i.e. if the
 indorser p^r value for the bill he
 must have notice -
 And if the drawer informs the
 drawer before hand that he w^o
 not accept they will not dispense
 with notice the drawer might
 have changed his mind 2 H Bl 612
 330. 5 Cr 239. 12 Cr 405. 712. 285 Ban 1355.
 1 B + P 652. 2 Bl R 390. 824.

When the drawer has no effects in the hands of the drawee the drawer ch. may prove that he sustained actual damage from want of notice 13 R 14

But 13 R does not believe this rule Ky 11 14:00 he cannot imagine any state of facts in which the drawer is sustained damage if he has no effects. 13 R 203

If the drawer has become bankrupt at the time of non acceptance 3 B. & L. notice need not be given the bankrupt has no property & it can do no good to give him notice & the assignees are not parties to the contract - all of which must be given if the drawer is bankrupt - see 13 R 14:00 if the drawer is abroad, he is not entitled to notice. 13 R 516 ch 14.

Some objection to give notice in all cases may be raised - but in these cases notice sh. be given as soon as the impediment is removed. If if the holder dies or is suddenly taken sick &c. - by some means

ch 17
101. If the drawer makes a condⁿ
acceptance & the condition happens
& then the drawer refuses payment
the holder c^d not then be released
by not having given notice - for
the acceptance has become absolute

ch 50
106. If the drawer accept, partially,
the prin parties are bound to the
extent of the acceptance with
notice, but no farther for as
to the residue the bill is
dishonoured.

Mode of giving notice,
 this is diff: in case of foreign &
 inland bills. with respect to the 12R 110
 former there is a prescribed mode of
 giving notice & of proving that Reg 136-14
 notice in this case where notice is necessary
 is necessary a protest is necessary & should
 and the want of a protest can be
 not be supplied by any proof what Bull 271.
 over, a protest is the conventional 22R 713.
 mode of proof established by genl 52R 234.
 law.

This protest is to be made in genl by 1. Notary 164
 a notary public - he is an officer Chgo. 1
 recognized by genl law. his official 1101 281.
 certificate of facts is evidence of
 the facts contained in it.

Full credit is given to this protest
 in all foreign courts. as to the form
 see 22R 713. Bull 1101 Reg 136 & 141.

When a notary cannot be obtained Reg 137
 in Engl. & if the protest may be
 taken before a substantial man
 & the notary. -

When the parties to be notified are not in the neighbourhood a notice by mail is sufft & tho it sh^d fail Bakerd^d of reaching the drawer still the notice Ch²⁵ is sufft.

Where there is no mail it is sufft if notice be sent by the first ordinary conveyance 2 4 B 565.

And a delay in sending may be excused by inevitable accident it sh^d be sent as soon however as the impediment is removed.

As to time the rule is that the holder Bull 271 must send notice of non acceptance 2 4 B 564 in reasonable time to all whom the holder intends to hold liable - Ryd 126. 129 East 3 Camp 248

The genl rule is that notice sh^d be sent on the day of non acceptance 4 2 B 174 if there is any regular conveyance on that day if not on the next regular conveyance 2 4 B 565

This rule was formerly much less strict than at present. Bull 27. 12 B 168 Comb 152. Ch 90. Long 14

1810 If the party to be notified resides
Ch 97 in the same place when acceptance
by 1810 is refused. notice sh^d be given in
the same day -

1810 2 Notice sh^d be given in person by the
holder or his agent - but it has been
Ch 98 held that notice by the acceptor is
suff^t.

Ch 98. And notice to any of the ^{to a prior party} indorsers
or by the holder must be taken
advantage of by any of the other
indorsers.

When notice is necessary at all it sh^d
be given to all the prior parties to
whom in any event the holder intends
to resort. 5 Ban 2670. 10R 712. 1 Vent 45
Ch 10. 91. 4. Peake Cr 100. 203 (n) 221. -

1810 441. Want of notice to the drawer is no
2 Ban 669. defence to the indorser if the latter
1810 334 had due notice, the holder may
2 Ban 669. select any one party & look to him
Ch 99. 203 alone & give notice to him alone
Talk 131. 3 Each indorser draws a new bill -
20 Bay 443.

✓ The consequences of neglect to give notice
may be waived by matter of post facto nature.
ex payment of debt by a prior party 23 R 713
is a waiver of notice. so a promise to pay the bill.
18 R 77.
24 R 202
6 R 102. 132
158. 202: 3

✓ But if a party to whom notice has
not been given promises to pay with 5 Dan 267
a knowledge of the fact of non- 13 R 712
acceptance he is not bound by the 6 R 102.
promise.

✓ But this rule has been denied for
it is held that this promise is an admission 7 East 231.
that he has rec^d due notice 15 R 334
& that such promise will support 13 R 321
an allegation of due notice. 2 East 404.

It has been held by Lord Kenyon that
a promise made by a prior party to
upon reasonable notice if non acceptance
has not been given who did not know
that by law he was discharged 8 R 2 East 469
not bind 13 R 321 15 R 334
657.

It was decided in the same case
that the drawer having paid the
bill under such circumstances might
recover back the money in an action
for money had & not paid.

Ch 10/12 In case of cond^d acceptance want
stra 2/12 of notice is cured if the cond^d is
comp 5/11 performed before the day of paym^t
15R 1/12 for then the acceptance becomes
absolute before the day of paym^t.

But I think that if the cond^d is
not complied with until after the
time of paym^t mentioned in the
bill the holder will not be excused
for want of notice of the cond^d
acceptance - for in this case this
amounts to an enlarged time of paym^t
to the acceptor.

When a foreign bill is protested for non acceptance the drawer may accept *supra* protest for the honor of the drawer or of any indorser. This may be done in any case when the drawer is willing to volunteer for the mere purpose of preserving the credit of the drawer or indorser. This is the usual case where the drawer is unwilling to accept on account of a third person on whom account a bill is drawn.

In this case he should immediately send a copy of the protest to the indorser to let him know he is liable.

The object of this mode of acceptance is to prevent the presumption that the drawer has effects of the drawer in his hands, which is raised by a simple acceptance.

The effect of such acceptance is to give the acceptor *supra* protest an action on the bill agt the party for whose honor he accepts. & on paying the bill he acquires a right of indemnity agt all the parties prior to him for whose honor he accepts. He takes the place of him for whose honor he accepts.

But the acceptance supra protest secures
no rights not the parties subject to
him for whose honor he accepts, for
he merely takes the place of him for
whom honor the bill is accepted.

Ch 104.5 If the drawer refuses to accept in your
Lyd 153. form any stranger may accept for
Cuth 124. the honor of any person on the bill
Blans 138. & his rights in payment are precisely
the same as the drawer's if he had been
the drawer had he accepted supra protest.

Blans 141. A Bill previously accepted supra protest
Ch 104. in one strand for the honor of one
party may be accepted by another
stranger for the honor of another party
& so on ad infinitum.

Ch 104. It has been said that the holder is bound
Lyd 105.155 to receive an acceptance supra protest
if offered by any responsible stranger
but this cannot be law. The implied
engagement of the drawer & indorser is
that the drawee will accept.
Indeed if the drawer refuses to accept
according to the tenor the holder's right
of action is complete.

Bills of Exchange (184)

After an acceptance subra protest to a stranger the drawer is willing to make a simple acceptance in case he is held to it but by the consent of the holder & stranger who accepted subra protest he may do it.

The acceptance subra protest is as binding on the acceptor as any other acceptance. His liability is the same as the liability of the party for whose honor he accepts. have been or rather is!

If he accepts tin for the honor of the drawer any indorser who has been obliged to pay may resort to the acceptor supra protest.

If the bill is accepted for the honor of a particular indorser he is liable to any subsequent indorser compelled to pay the bill!

If the acceptance is for the honor of the drawer alone, the acceptor only has a right of indemnity of the drawer only.

Transfer.

Whether a bill is negotiable or not is,
2 Bar 116. matter of law arising on the face of the
1 R R 245. bill itself in new cases currency may be
Gong 603 made of eminent merchants - this practice
Watson 153. is however seldom resorted to.

42 R 28. In general a valid transfer can be made
1. A B 607 either by the payee or by some person
Ch 110. who has derived from the payee the legal
1202 title to the bill.

1 Bar 462. The same rule will hold as to bills transferable
350 1576. by delivery. The person who has
72 R 427. the legal interest is the only person
1 B R 435 who can make a valid transfer.
Gong 611 a This rule however holds only where the
633 person who takes the bill knows that
the person transferring has no right
to transfer.
It is subject bona fide holder for value
then will not be affected by the
want of title in the transferor.

Transfer.

If the payer or indorser becomes bankrupt 24 R 335
 the right of transfer vests in the assignee Ch
 and in general this right has relation Kyd 107
 to the time of insolvency.

On the death of a payee the right of 3 N 111
 transfer vests in the personal representative 2 Sha 110
 trans. — 2 Ben 125

17 R 417

14 R 622

If a bill is payable to or for the use of A and B
 of B the right to transfer is in A 2 Vent 307:4
 the trustee. Kyd 107:8

Ch 111

Bills are usually transferred after
 acceptance & before the day of payment.
 But a transfer may be made before the bill is made. or rather the
 operative act of transfer may be done before the bill is made.
 as by indorsement of a blank piece of paper.

It could transfer may be made after
15 May 71 the day of payment but it is dangerous
75 R 430 to the indorser & the indorsee however
3 Jan 1870 cannot object to the transfer on
35 R 10 this ground. - he is bound as effectually
(Ch 107) as if the indorsement was made before payment
75 R 423 - the prima party however may object
1 Wils 230 and show any equitable defence, i.e.
32 R 13 the party who indorsed the bill before it
was payable, but the indorsee may sue
any indorser who transferred the bill after
it was due & the latter cannot set up any
defence on the ground that it was rec^d when overdue
15 R 614 - If a bill is indorsed after it has been
1 Wils 46 paid the indorsement binds no other
45 R 47 person than the party making it
i.e. but this rule must suppose the payment
made at the time of payment or at
any subsequent time. For if the holder
rec^d it before the day of payment he
is not liable to this equitable
defence.

A bill paid in part may be
indorsed over for the residue, but
not if it is paid in full. The indorser
must sign the bill for the residue, and
the bill is then a new bill.

2d Raym 360.
Call 466.
12 Collod 213.
1 Call 65.
2 Wils 262
Ch. 115/16

The mode of transfer is governed in genl
by the legal operation of the instrmt
& not of course by the terms. tho in 18 R 600
genl the terms & legal operation
coincide.

A Bill payable to a fictitious
person, ^{or order} is transferable by delivery
& the indorsement is merely void
as to the transfer of the instrmt
by it.

A bill is transferable in two other
cases by mere delivery. 1st where it
is payable to a bearer & secondly, when it is
indorsed in blank.

Long 600
18 R 442
18 R 442
3 R 174
18 R 442
18 R 442
18 R 442

No technical form is necessary to
make a valid transfer. *Red. 110*
110. 110. 110. 110. 110. 110. 110. 110. 110. 110.

The indorsement may be in blank
in full or not in full. *Red. 110*

110. 110. 110. 110. 110. 110. 110. 110. 110. 110.
A blank indorsement while it remains
so does not per se transfer the
interest it merely enables the holder
to fill up the indorsement as he
conveys it by an assignment or by a
negotiable note. *Red. 110*
It is sufficient that it be filled up
at the trial.

But at present it seems that a blank
indorsement per se is sufficient to transfer the title
to a bona fide holder (*Ch. 174!*)

Hence while the indorsement remains
in blank an action may be brought
in the name of the indorser but
not when the indorsement is filled
up. *Red. 110*
110. 110. 110. 110. 110. 110. 110. 110. 110. 110.
244.

✓ So while the indorsement remains in blank the negotiability of the instrument cannot be stopped by any restricting indorsement which conveys the interest in Sept 1862 the holder may strike out the restriction 4 Espr 10. indorsement & fill up the blank indorsement with an order to pay himself the holder.

But this rule does not hold where the subsequent indorsement does not convey the interest - the holder then has no right to strike out the indorsement. (H)

✓ But a bill payable to order is not negotiable by mere delivery unless it is indorsed in blank by the holder or by some subsequent indorsee. Telled by 1 H Bl 606. Doug 11. 26 617. 2639.

An indorsement in full is one which expresses to whom the bill shall be paid and thus per se transfers the interest unless it is indorsed to one as agent for the indorser. Ch.

The negotiability of a bill regularly
 issued cannot be stopped in
 any subsequent part with the exception of
 abstraction. *sign R 31. 1 Bl R 255.*
2 Bl R 255. 1 Bl R 257. Long 17. 62

Long 17. 1 Bl R 255. 1 Bl R 257. Long 17. 62
 1 Bl R 255. 1 Bl R 257. Long 17. 62
 1 Bl R 255. 1 Bl R 257. Long 17. 62

But A person or individual who has the
 absolute interest in the bill may of
 course restrain its negotiability.
2 Bl R 257. 1 Bl R 255. 1 Bl R 257.
4. R 255. 1 Bl R 257. Long 17. 62

1 Bl R 255. 1 Bl R 257. Long 17. 62
2 Bl R 255. 1 Bl R 257. Long 17. 62
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98 Bl R 255. 1 Bl R 257. Long 17. 62
99 Bl R 255. 1 Bl R 257. Long 17. 62
100 Bl R 255. 1 Bl R 257. Long 17. 62

Such an indorsement must however
 bind the indorser tho it cannot the
 acceptor.

But if a bill is indorsed in full
 now, before presentment & the drawer becomes
 acceptor he subjects himself to a
 transfer liability. He implicitly engages
 to pay according to the indorsement.

The drawer himself can never be subjected to l.i.
 in such an indorsement until the indorsement is cashed.
 was made before the bill drawn. Ryd. 39.
 & Kay 360.

But after part of a bill has been cashed
 it may undoubtedly be indorsed in full
 for the residue. In this case Ch. 20.
 in kind, the acceptor. he then incurs l.i.
 no two fold obli.

To complete the transfer the bill sh^d be
 be delivered —

Operation of a transfer

Bin 74 The indorser is then almost
Calk 137 and respect the drawing of a new
Bia 471 bill - Ch 12

Calk 137

On this principle the indorser of
Calk 129 a promissory note is a bill of exchange
40 R 144 and may be received as such
Bin 676 at least wgt the indorser. Ch 12, 170-1.

Calk 132

2 R 144

2 R 144 Some as in case of a bill if the name
Calk 125 of the maker is forged the indorser
2 R 144 is still liable to the indorsee

Ch 122-4 And this, although if the indorser may
be discharged by the indorsee's
neglect, precisely as the obligor of
a drawer or indorser of a bill may,
be, as by want of notice that the
note is dishonored, &c. &c.

The transfer of a bill by lure delivery if made for an antecedent debt or for a debt contracted at the time of transfer subjects the party making it to an obligation similar to that of an indorser as to the immediate assignee. —

There is perfectly no similarity in the obligation where one indorser he is liable on the bill. but where a bill transferable by delivery is transferred by lure delivery the person delivering it is not liable on the bill — All which the rule amounts to is that the person who transfers is liable to the person to whom he transfers it on the original consideration if the bill proves unproductive, thus far he is liable unless the assignee assumed the risk. to agree to take the bill as payment. in which case the assignor is not liable at all — and in no case is the assignor liable to an indorser or immediate assignee.

When a bill is transferred by mere
 delivery or a discount the assignor
 is not liable at all either on
 the bill or on the original contract.
 In a discount is meant a sale of
 the note where money is advanced
 at the time. Here the assignee
 assumes the risk of course. See
 chapter. 32 R 757. 12 R 447. Ryd 401
 Ch 109. 123. 23. Comyn C 289. 90.

1 R 1135 The undertaking of the parties to
 4 R 125 a bill are several & distinct hence
 Ch 114. if one is taken in by a & voluntary
 4 R 1125 discharge out of custody does not
 discharge the remedy of the
 holder not the others.

1 R 481 if the holder of a bill transmissible
 1 R 170 by mere delivery loses it or it is stolen
 7 R 427 if it & it afterwards comes into the
 1 R 116 hands of a bona fide receiver
 3 R 76 for value before it is due the
 holder may recover on it not any
 of the prior parties.

The robber or finder cannot recover
 1 R 1163. But it seems that if the receiver took the bill under
 4 R 117
 2 R 11. circumstances which ought to have excited his suspicions,
 and he be guilty of gross neglect in receiving the bill
 the receiver cannot recover. Harrington & Payne 191.

When a lost bill is p^d out of the usual course of business the drawer may be compelled to pay it over to the party who lost it. & the drawer pays it before the bill becomes payable
 1 Esp 40. 150:1. Ch 150:1 &c.

If a bill transferable by indorsement is transferred by a forged indorsement the indorsee acquires no title under it he can recover only agt the parties subject to the forgery.

Hence the true owner of the bill may recover agt the acceptor drawn & paid tho they have paid to a person claiming under a forged indorsement.

4 R 28
 1 R 607
 Long 617
 637
 Ch 115-157

1 If the drawer of a bill is a foreigner or a resident in a foreign country he must give the holder a promissory note payable when the bill is payable & if he refuses to give it the bill must be protested as dishonoured.

and in all cases of a bill lost if the drawer cannot or will not give a new bill the protest must be made on a copy of the bill.

2 If the drawer absconds the holder may protest the bill for better security & give notice to the principal debtor to pay 1743 Beans p. 121 & 122. (Ch. 39 11)

This rule relates to a bill previously accepted & when the acceptor afterwards absconds for if the drawer absconds before acceptance a protest for non acceptance is proper.

Common Dig
Mer. L. 5.
Ch. 39

This better security is given by a third person who engages to become liable as principal supra protest and is like a second acceptance for the honour of the acceptor.

It trusts that these rules apply to foreign bills only.

The holder must present the bill for
payment to the drawer at the time when
the bill becomes due whether previously 23R581
accepted or not presented for acceptance? Pan 601
(If the drawer refused to accept still Salk 127
the bill must be presented for payment. Stra 1087
As concerning the latter part of this rule such 2Mc470
presentment is unnecessary (Chry. 300. Stark Pp. 10 east 105 &c -
And if the presentment is not thus made & if
the holder loses his remedy ag^t the prin-
cipal - If the drawer is dead presentment
sh^d be made to his representatives or
if none such at his last dwelling -

Non presentment for payment may be excused if want of notice for non acceptance may be. Ch 12: 50c

The acceptor himself cannot defend on the ground of a delay in presenting for accept payment. Doug 235. 247. 100p R 40. Ch 84. 133. 156: 7.

According to some opinions an action will lie ag^t the acceptor with presentment for payment. Ch 133. 10 clled 31. Bailey 78 (r b) 108 r b - This rule is not conformable to the gen^l opinion of law writers. 12 dund 93. & it does not like the former rule - Ch the acceptor cannot find out who the holder is

It seems absurd too that if the acceptor
refused to pay the note in demand
2 H 135 or after demand the acceptor may
Ch 134 insist on want of demand - this and
is diff. from that which obtains in
case of bonds & notes not negotiable
& must have proceeded on the prin-
ciple which determines the last case
in favour of holder's opinion.

Ch R 15. Validity of presentment must be
Ch R 15 made by a person capable of giving
Held 10 an acquittance.

Ch R 15. In the case of a presentment to a bank
which is a corporation, the presentment must be made to the
proper officer of the bank.

2 H 134. Presentment in case is to be made to
Ch R 15 the drawee - but it is sufficient
Held 10 present at the acceptor's dwelling
Ch R 15 house or house of business in the
immediately adjacent place. Where a place is
designated presentment must be at that
place.

2 H 135. If the place designated is the drawee's
Ch R 15 house & the acceptor is absent there is
no necessity of a formal demand.
It is suff. to inspect the drawee's
books it is said - this inspection of
books is mere surplage.

If no place of payment is appointed
 & the acceptor has removed demand should
 be made on him if he can be
 found by due diligence - and if
 the acceptor has left the state in this
 case presentment at the dwelling house
 is sufft.

Ray 704.
 Ryd 125.7
 1 Esp R 516.
 Ch 133.

No demand on the drawer is necessary
 to subject an indorser nor a demand on
 an indorser to subject a subsequent
 indorser or a prior indorser of course.
 As to the holder the liability of the
 drawer & indorser is coordinate. as
 between the drawer & indorser there
 is a priority of liability.

Where a bill is payable at a certain
 time after date or after sight or
 at usance it is not payable on
 day mentioned but days of grace
 are allowed and presentment for
 payment must be made on the last
 day of grace.

4 R 170
 Ch 143.
 4 R 157.2
 Ryd 7.15
 14-25.
 1 Esp R 57.
 261.

When a bill is payable on demand (or at sight) days of grace are not allowed according to the weight of English authority. Beams h.c. 50.

1 John Ca 321 2 Carus R 343. 2 Carus R in Irish 145. 4 Sarsar 147 contra.

The number of days of grace is regulated by the law of the place where the bill is payable. Beams h.c. 130 h.c. 130.

When a bill is drawn payable after date &c. the day of the date is excluded in the computation of the time. ex Bill dated 1 Jan. the first day is Jan 2.

So where a bill is payable at usance. or when at a given time after sight the day of sight is excluded. 2d Ramm 280. C.R. 211 Beams h.c. 502. C.R. 211 (Porter 376 contra)

2 Vent 358:10

3 R 623.

Comp 714.

On 2 Nov 440.

This rule is opposed to the general rule of the C.L. ex if a lease is made to expire certain days after date the day of the date is included so in bonds & covenants —

If however a lease commences 'from the day of the date' the day of the date is excluded.

In the conveyance of a freehold made
to take effect from the day of the
date this distinction is made
the conveyance attains void it is implied
be the location of a freehold
to take effect in future - but
in this case it is implied valent
quam present the deed is construed
to take effect on the day of the
date

If a conveyance is made by deed or otherwise
from the day of the date of the deed

4 R 337
Conveyance
part 63
Reason 46
Case 11

If by the terms of the bill it is payable ch
on Monday & grace is allowed
presentment must be made on Thursday.

If the English law and our own Sundays
are included in computing the days of grace — If the last day of the
grace is Sunday or a great holiday, Kyd 120
presentment ch be made on Saturday ch
or the day before the great holiday
In other cases presentment before
the time is merely void ch 141.

Example
The usual time fixed on
for the payment of bills drawn
from the foreign country is another
little point.

If a bill is payable at a month or
at a given number of months after
date &c the month is a calendar
month &c &c - This is the reverse
of the case - Dec 141 &c &c 204 &c &c 300

Bills of exchange. (135)

✓ The day of payment being ascertained the bk bill sh^d be presented for paym^t where there Kyd 125. are hours of business within these establish^d hours. —

✓ Payment sh^d be made to the party having title to the bill & paym^t to any other will not in gen^l discharge the acceptor &c.

Poth p 164.
Ch
2 Vent 310
Curth 5
Kyd 107. 8.

where money is payable on a day certain 4JR 173 the gen^l rule is that the party bound 1 Saund 287 has until the last convenient time of Ch 153. the day to pay —

But in case of foreign bills the 4JR 174 acceptor is not allowed till the last Kyd 121 hour of the day for a protest must Ch be made on the same day. & time must be allowed for this,

But it has been held that the Kyd 124 acceptor of an inland bill is entitled to the whole of the day. but this rule is doubted & JG thinks very properly. It certainly cannot apply to cases where there are hours of business & in all other cases, it is held that tender must be made before dark how then can the acceptor have the whole day when a tender after dark will not discharge him? —

Ch 35. If the holder compounds with the
acceptor the other parties are
discharged with consent of the
prior parties.
100.

Le Ray 73. If the holder receives of the acceptor
anything less than the sum due in
full satisfaction with consent of
the prior parties the other parties
are held to be discharged - I
can discover no reason in this rule
this payment pro tanto is altogether for
their advantage. vide Ball 27: 3: 5
Ch 156. no. Cooke B 117.

It is said to be a doubt whether
the party bound can insist on a
written receipt as a condition of
payment. but I think that no
It can insist on a written receipt
as a condition, the contract
is unconditional - to pay the
money. - Ch 157. to. Peake R 179: 80. (Ch 357)
Le Raym 100. - see vide 2 B 31.
Peake R 77: 80 or 179: 80. vide 2 B 31.

A good receipt on the back of a bill not expressing by whom payment was made is prima facie evidence of a payment by the acceptor. Peake R 25.

Ch 209. 157: 8. Ch 388. 120. Reyn 142. 2. 12. 16. 43. 2. Dallas 144.

If payment is refused on presentment only made the holder must in quick give immediate notice to the principal parties or they will be discharged & in case of foreign bills a protest must be made & notice of the protest made. Ch.

This point has not been judicially decided in Engl.^d & in one case Judge Court. Van N. has decided that such notice is unnecessary - sed quoniam is present. necessary to subject them if notice of it need not be given.

If on presentm^t for paym^t part only is
p^d notice of ~~that~~ fact must be
given protest made &c. Ch 156. 100.

Protest for non payment of a foreign
4. R 175 bill must be made on the day of
Kyd 743 refusal to pay & notice given to
Kyd 11. the prior holder on the day of the
12 R 101. protest after that day is
Kyd 124.
L. H. 155.

4. R 175 In case of inland bills notice is to
Kyd 745 be put on the day after non payment
L. H. 155. or on the next regular conveyance
12 R 161.
(L. H. 401)

ch 165. When a foreign or inland bill is
Kyd 152. dishonoured by non payment & a
Beaver 456 protest made ^{payment supra} protest
may be made by a stranger for
the honor of any indorser or drawer
Some confusion with respect to
inland bills. It seems however that
the in general a protest of an
inland bill is not necessary yet
a protest must be made to enable
the payer supra protest to recover
on the bill of him for whom
he pays to -

When the drawee has made a simple acceptance he cannot pay for the honor of any party, or he cannot acquire the rights of a payer supra protest. for by his simple acceptance he has become liable to indorsers, but the person who pays supra protest has a remedy agt the indorsers—

But if the drawee has actually has no effects of the drawer, he may after simple acceptance pay for the honor of the drawer to obtain him a remedy on the bill agt the drawer, as between these parties their relative rights depend entirely on the fact of the drawer's having or not having effects in his hands.

Payment for the honor of a prior party sh^d not be made until after protest.

If the acceptor for the honor has rec^d an acceptance supra protest with approbation the acceptor may pay with protest for non-payment. This rule w^d perhaps be better understood if expressed thus: If the acceptor supra protest for the honor of a particular party receive his approbation of the acceptance he may pay the bill with any protest for non-acceptance payment.

Promissory Notes

2 B 467. A promissory note is a direct ^{in writing} engagement
by a person to pay a sum of money to another
named or his order. or bearer &c.
in

A note not containing the words
or order &c is not a promissory
note, it is merely evidence of a simple
contract tho perhaps in pleading it may
be counted upon directly (vide ante)

A substance such a note is analogous
to a bill drawn by the maker on
himself. Such notes at common law are not
negotiable tho' expressed payable
to order &c. but at common law are merely
evidence of a parol contract & no
instrument. - Talk 124. & Rayn 157. 4.

Red 19. By 455 Statute such notes were made
Ch 1679 negotiable like inland bills of exchange
& made perpetual by 7 Ann - This Stat
converted them into instruments

See also 124. & 157. 4. Rayn 157. 4.
in the 124. & 157. 4. Rayn 157. 4.

✓ Promissory notes are entitled to days of grace in England Dougl. and 1 Hargr. 304
 4 R 152. Bull 274. Ryd 135. 1 R 107 -
 As in Count 1 Count R 324 2 Count R 324 v
 224

Bank notes are sometimes made payable in gold, say as in a remittance. But the notes are payable certain days after date sight &c.

These in court are treated as money
 1 Burr 457. 2 R 554. 1 R 335. Ch 172.

To some purposes they are treated as oblig^{ns} if then they are not made the corporation issuing them may be sued on the Bill as a promisor &c.

But money had & rec^d will not lie for bank notes - trover is the proper action - this action for money had & rec^d lies only for money strictly so called. -
 This rule applies only to cases of bills found to be true. Trust. Burr 274.
 If the holder as finder &c. sh^d obtain money for the bills money had & rec^d will lie for the proceeds of the bills.

But unless the bills are produced at the trial receipt of the money for them will be presumed
 (Ch 426.) Dougl. 138.

no promise in the language, no technical
form of words. Ch. 1 Mod 362
The City 300 24th 32. Lo Rayn 1390.

But the mere acknowledgment of a
debt with words amounting to a
promise will not be construed a
promissory note by J. O. H. 1 Ex 400
Ch.

The essential requisites are the same as
those of bills of exchange 5 R 416.
4 Mod 242. 1 Burr 323. 4 CR 140. 7 CR 243.
7 CR They must be payable in money
only & not on a contingency, &c.

7 R 243. It is said that par. action will lie
Ch. on the note - ^{between the original parties.} if it wants any of these
requisites - but it can answer no
purpose to count upon it for it
involving no considⁿ & indeed it is
when counted upon much evidence
of a simple contract liable to be
contradicted as any written evidence

Remedies.

A bill of exchange is the usual remedy on bills of exchange & promissory notes. & is said to be the only remedy as between parties not in privity, but debt will lie between parties in immediate privity.—

The holder when the bill is dishon^d may sue each of the prin. parties severally & if the drawer has accepted & refuses to pay he may sue the accept^r & each of the other parties separately.

4 CR 421.

Ch 179.

7 CR 64

12 CR 421

12 CR 444

4 CR 521

12 CR 515

15 CR 7

Ch

But no action can be maintained on the instrument ag^t any one whose name is not on it.

Sh

And if the drawer having accepted refuses to pay & the drawer has been compelled to pay, he may maintain an action on the bill ag^t the acceptor.

all. It says the drawer may sue the
drawee for not accepting a bill
drawn on him - but this is not
law. ie the drawer can never maintain
an action for non-acceptance on the
bill

7. R 571. And the rule is good that any
party who has been compelled to
pay a bill may maintain an
action on the bill agt any prior
party.

4. R 470. In good an action will not lie on
a bill agt any one who became
a party after the holder - Ex where
a bill has been indorsed back in
a circle. as if it indorses to B &
B to A. A cannot sue B. But A
can of course recover agt any indorser
prior to his first indorsement agt
the acceptor - & an indorser before
acceptance may recover of the acceptor

An action will not lie by the holder ag^t the party in immediate 73 R 111.
 privacy unless the holder gave value 571. 350.
 to him for the bill. Between these Doug 574.
 parties the considⁿ is examinable— 1 B & P 651.
 (2 Bl 446.)
 contra)

And the Plf in the last case can 2 Ph 22 (n.b.)
 recover no more than the considⁿ 7 John 331.
 is no more than the Plf paid 13 John 52
 Hence if the payee owes the drawer 18 John 111.
 he can recover no more than he p^d Ch 44
 for the bill. 12 Ph 112 a)
 (2d finem.)

The holder may sue all the prin 11 Wils 46
 parties at the same time but he 3 Colld 10.
 can have only one satisfaction, 40 R 691.
 but each of the other defts must Ky d 112.
 advance the costs. 116. 191.
 Ch.

And in an actⁿ ag^t the drawer or 40 R 691
 indorser he pays the amt^t of the bill 575
 & the costs ag^t him the Ct will stay Ch
 proceedings & he need not pay the Ky d 191
 costs of other actions. 11 R 749.
 Decis of the acceptor 40 R 691. Mar 1
 Ch 193.

If the holder receives what he wants all
he may have ^{ex} ^{ag} ^{hard} & ^{commit}
all to prison, but he can take
out only one ^{fi} ^{fa} only one ^{ex}
out goods. ^{tra} 575. ch 113.

For the body is a pledge but
goods are the means of obtaining
satisfaction.

But the meaning of this rule
must be that the holder can
have but one ^{fi} ^{fa} at a time.

Declaration

The holder may in good form
his action on the bill or on the cons^{ts}
of it & give the bill in evidence.
and the practice now is to add the
money counts to a special count
on the bill

32 R 174

Ryd 177.

199 58.

Dun 323

20/11. 1576.

102/11/12.

OK

In declaring on bills of exchange it was
formerly usual to state the custom of
merchants but it need not even be
referred to. 1 Rym 21. 175. 1542. 18. faith 18.
207. 270. 18 14. 5. 234

In declaring on promissory notes it is usual
in Eng^l to declare that the def^t & he
became liable by the it of c^{on}. that
the decⁿ may appear to have been founded
on the stat^e & not on the c^{on}.

In the count on the bill or note OK 115. 12
it is not necessary to state a consid^r. 134. 15
for it implies a consid^r. 1 Rym 751.

Perfect unnecessary - 42 R 338. 1814 38.
OK

When the form & the legal effect
of the note is then the legal effect
upon according to the legal effect.
20 R 170 335 282 481 543 116 R 313 569.
21 R 24 208. Some con. B. to 1. M. H.
id

It is s^d not to be identical in meaning
on the 170 in a bill of exchange it is alleged to
be a substantive promise - because the law
Ry 190 raises a promise on the custom of
20 R 538 merchant - But the drawing of
in 181. a bill must show an indebtedness
230. not a promise - the promise is
however usually alleged -

The form of a bill acceptance
contains no express promise. it is s^d
that the law will raise a promise
from the use of the word - But this is
precisely the case in indeb: aumps!
the law raises an assumpsit but
still the promise must be stated.

The indorsee may sue his immediate indorser as on a bill drawn by the indorser payable to himself — so where there is an indorsement in blank any holder may sue the blank indorser in this way —

In an action on the name of indorser the Plf must in general allege presentment & demand for payment & due notice of non payment — and in some cases the Plf must allege presentment for acceptance & notice of non acceptance. The omission of any of these allegations is fatal even after verdict. —

On the common counts the instrument is between some parties good evidence. But when the bill is introduced for this purpose it may be contradicted by any evidence. it is more precise in such cases when not counted upon it loses a little of its sanctity.

Under the common count, the Plf
32R 174 may go into evidence of the Consider
720 241 whether he paid for the bill or not -
154R 245 the Bt. Note do not merge the orig.
East 58 simple contract
Hia 119.
Ball 137

If the drawer not having effects of the
drawer pays the bill the bill in the
hands of the drawee &
is evidence of money p^d l^t out &
expended for the use of the drawee
but the drawer must prove that he
had no effects of the drawer for
the presumption arising from a
simple acceptance is that the
drawee is indebted to the drawer
where however the bill is accepted
a p^d supra protest for the honor
the onus lies on the Deft.
12R 264. 72R 576. 1EspR 332. Ch

SalR 283. The holder again may maintain agt
Bum 1876. the drawer an action for money had
Bayley 95. & rec^d & the bill is prima facie
Ch evidence on this count & this is true
of the remotest indorsee - the drawer
is presumed from the bill to have
rec^d money from the payee to pay
to him whom the payee shall appoint.

It has been held that a simple acceptance is evidence in favor of the holder as to the acceptor if an acct stated. 1 H Bl 239 Ch 1912. The reason of this is not very obvious -

Evidence,

Is of course governed by the pleadings Ch 194. In an action as to the acceptance the acceptance must of course be proved & where the acceptance is in writing the hand writing of the acceptor is usually proved. If by agent in writing the authority & hand writing of the agent must be proved. 1 Esp R 1415

A confession out of Ct by any party is good evidence as to holder. 1 Esp R 135
Otho 44.
1051. 399.
125 R 143.
Pike 11.
L Raym 376.
1542.

In an action agt the acceptor by
154 R 110 any indorser the hand writing of
154 R 504 the first indorser must be proved.
504 and as the case may be of the
other indorsers. if the first
154 R 200 indorsement is in blank only. the
hand writing of the first indorser
154 R 200 need be proved but if all the
indorsements are in full the
hand writing of each must be
proved. & it is to show the title of
the bill

Rule the same if the suit is agt
the drawer.

Where the action is agt drawer or
compt indorser the Plf must show due
577 diligence to obtain payment from
5 Ban 2670 the acceptor, or drawee. Due
154 R 712 diligence is proved by showing
254 R 1565 presentment for acceptance where that
77 R 581 is necessary. & presentment for payment.
2 Ban 664. in all cases, & says sed vide ubi -
2 Stra 1007.
Ch.

So plf must prove notice of the
dishonor in most cases. 5 Ban 2670
154 R 712. Ch.

In case of foreign bill protest also
must be shown this is the only
admissible evidence of dishonor.

25 R 113.
52 R 239.
Le Ray 443
Bull 270.
Peake 7114

In an action not an indorser it is not strictly
necessary to show a demand upon the drawer
and indorser is coordinate.

579
Bull 270
Le Ray 443
Ca 153

contra Bull 131. Le Ray 443.

If an indorser who has been compelled to pay & brings his action against the
prior parties he must prove that the
bill was returned to him & that he
has paid it otherwise his indorsement
is evidence that he has not the
title.

If the acceptor of an accommodation
bill sues the drawer he must prove
payment by him or something
equivalent as that he has been
taken in &c.

Where the bill claims by mere delivery
the Act in genl is bound merely to
produce the bill, & this is suff^t evidence
of his title - ch

In case of a foreign bill the fact of
presentment & refusal is proved by the protest.
all 207 43 R. 75. Peake 674 ch

Bills of Exchange c. 106.Debt on bills.

✓ It has been held that debt will not lie by the payee ag^t the acceptor because there is no privity of contract. But in truth there is a privity. the acceptor agrees to pay the payee or any one who may be entitled to the bill - The objection is as strong ag^t assumpsit, as ag^t debt to support assumpsit there must exist either privity in fact or in law, *Lo Rayn?* 88. ch 13.

Besides a bill of Exchange is an assignment of a debt & the drawee on acceptance becomes indebted to the assignee instead of the drawer.

Another reason given for the rule is that the engagement of the acceptor is collateral but this is not true he is regarded as the orig^l debtor.

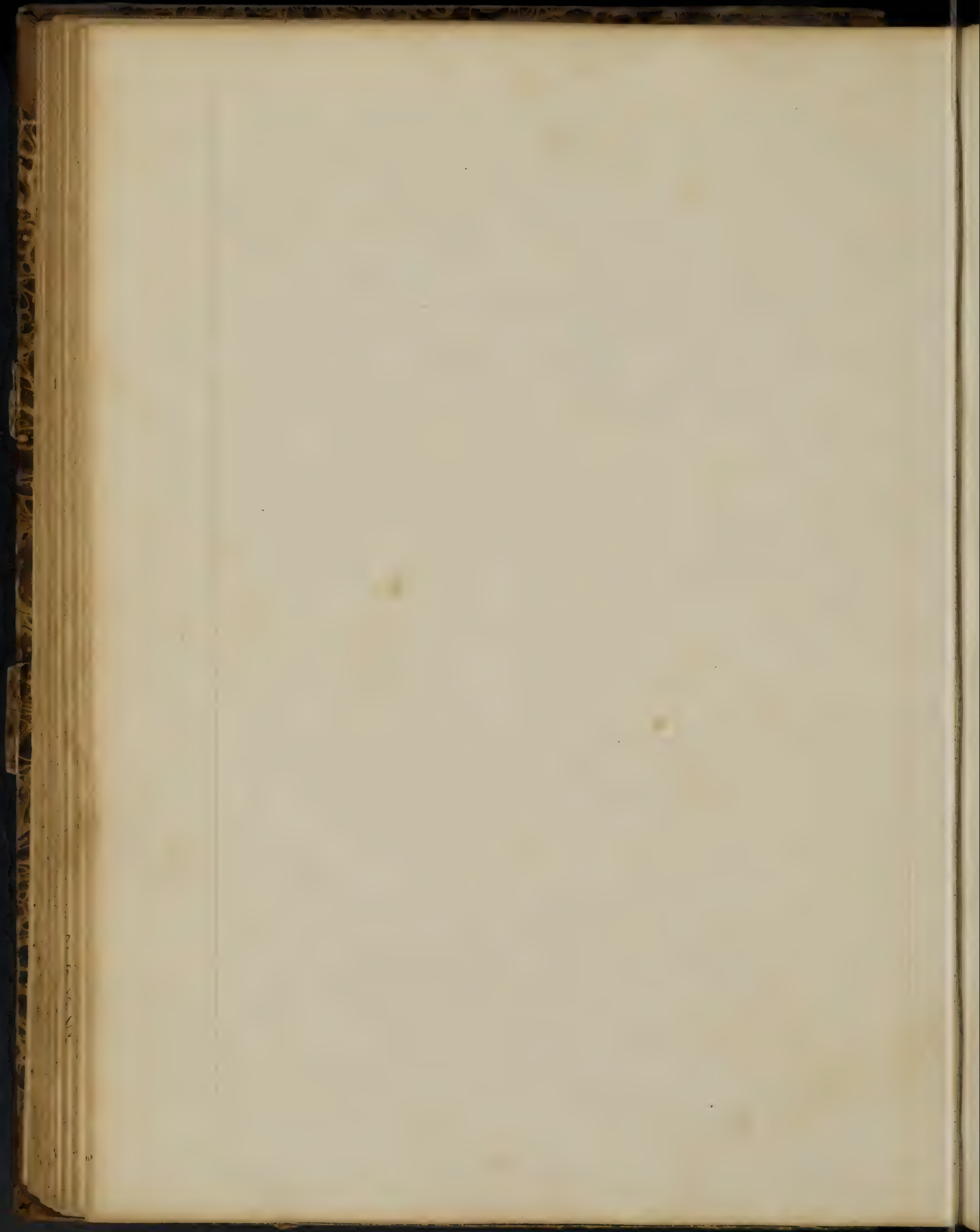
And it is a genl rule that when the C^r or custom raises an obligⁿ to pay a sum of money debt will lie *Conyn Dig* Debt (a).

Debt will lie as the maker of a
promissory note by the promise & I think
by the indorsement. The maker engages
to pay to J. S. or order the indorser may
maintain debt on the same principle
in which debt may be maintained on
an advertisement to pay \$100 to him
who shall catch a thief &c.

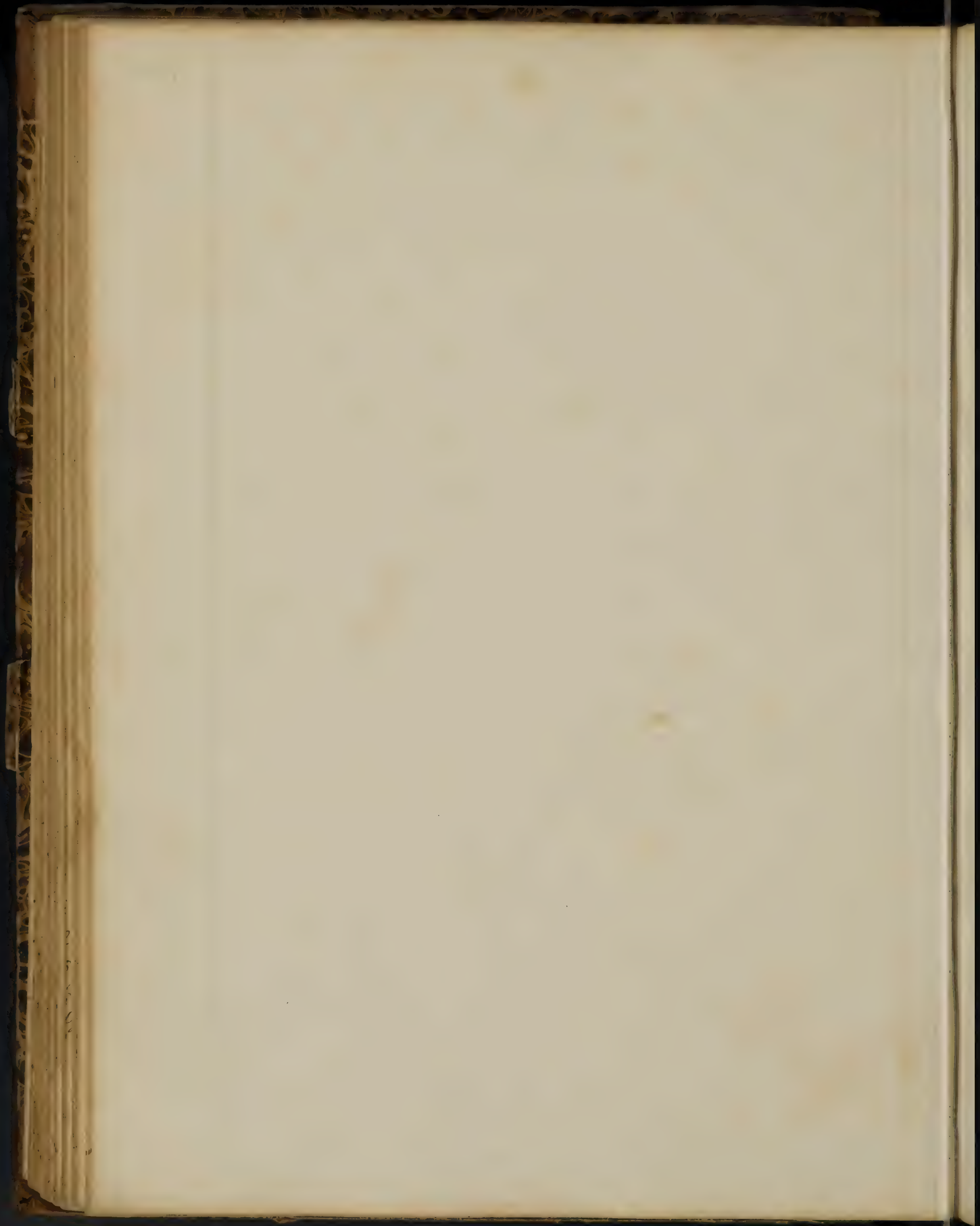
10 Celled 38. Stra 680. ChB. 5 Comm. R 71.

Sw & 576. 2 B & P. 78. 2 Saunders 62.

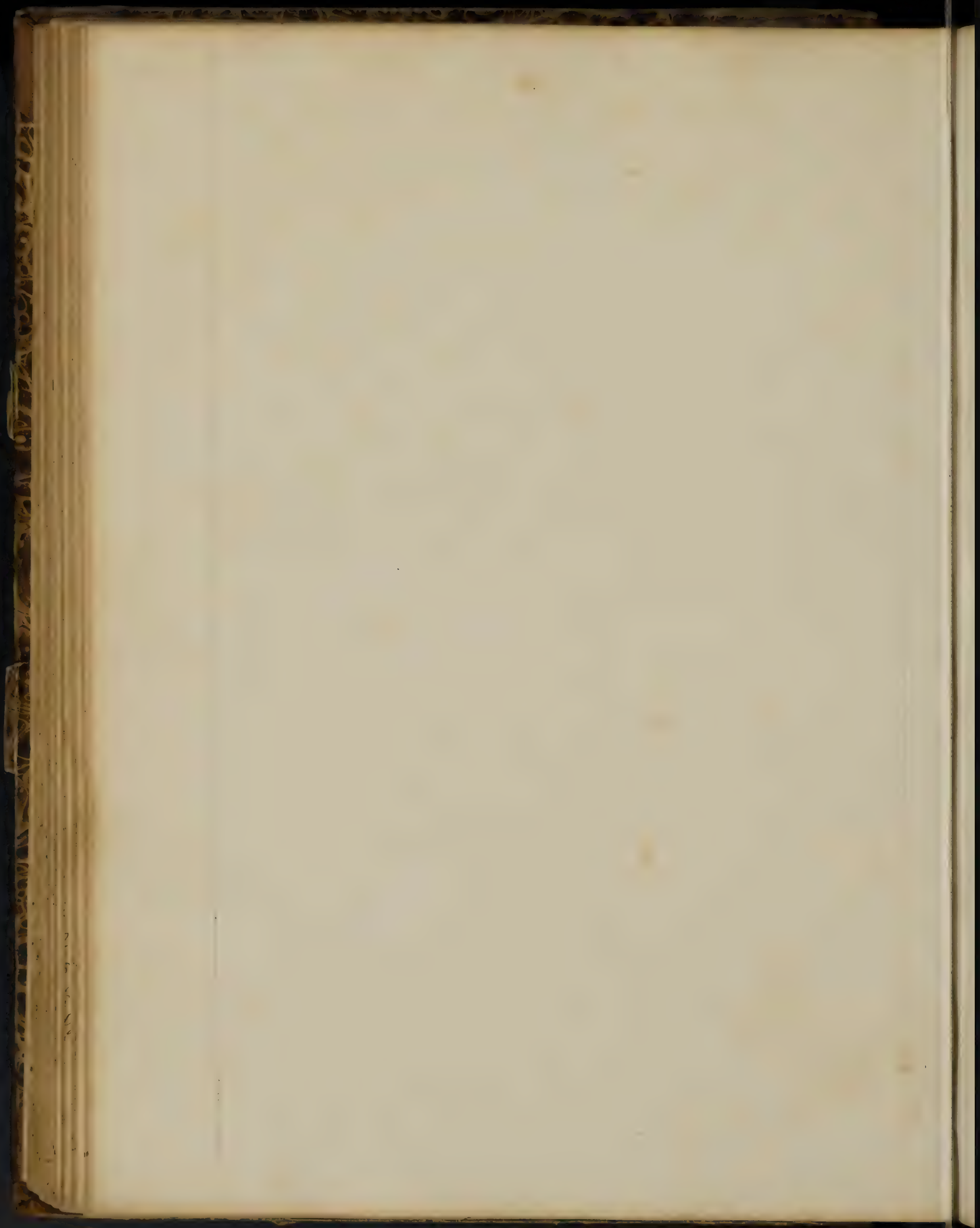
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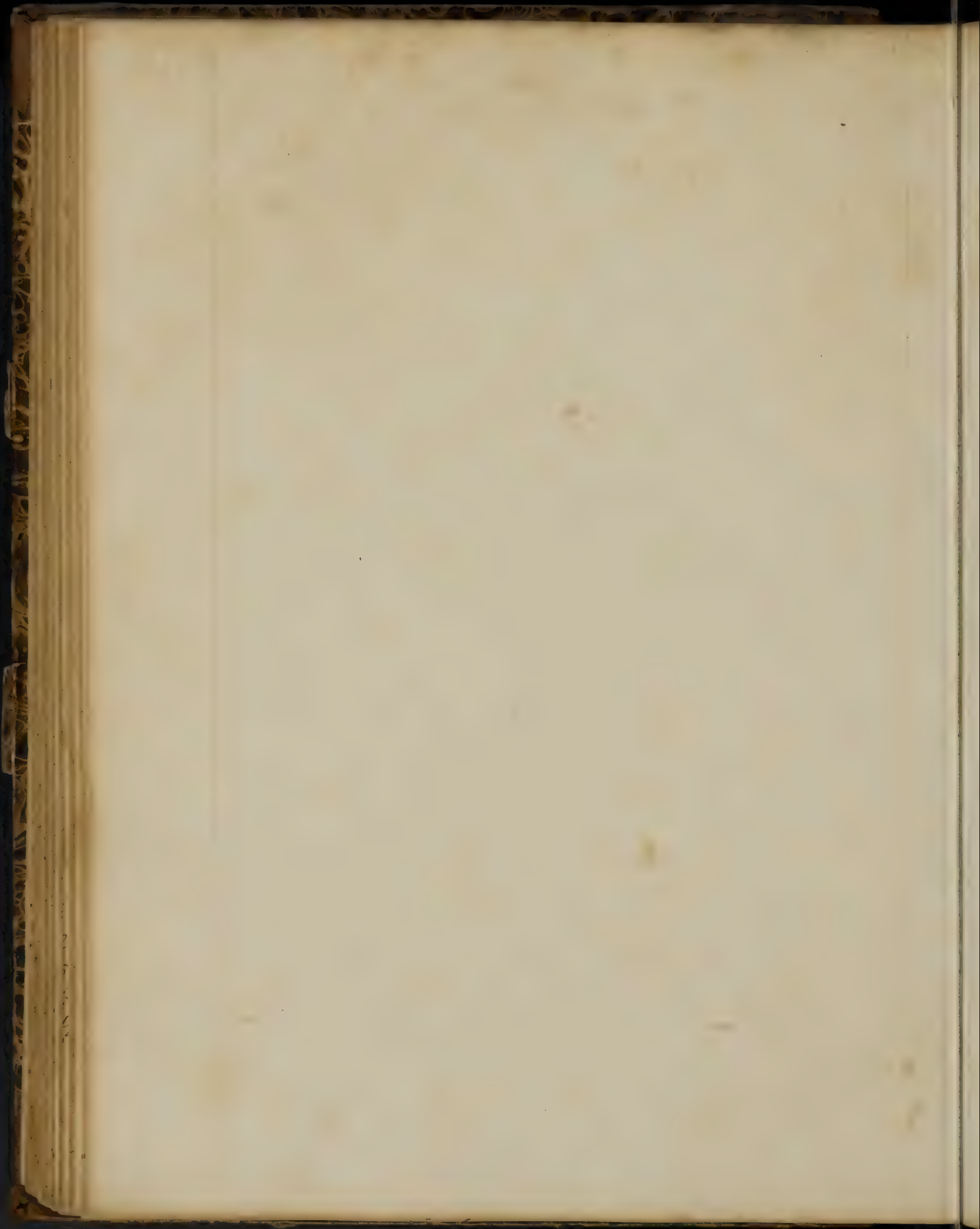
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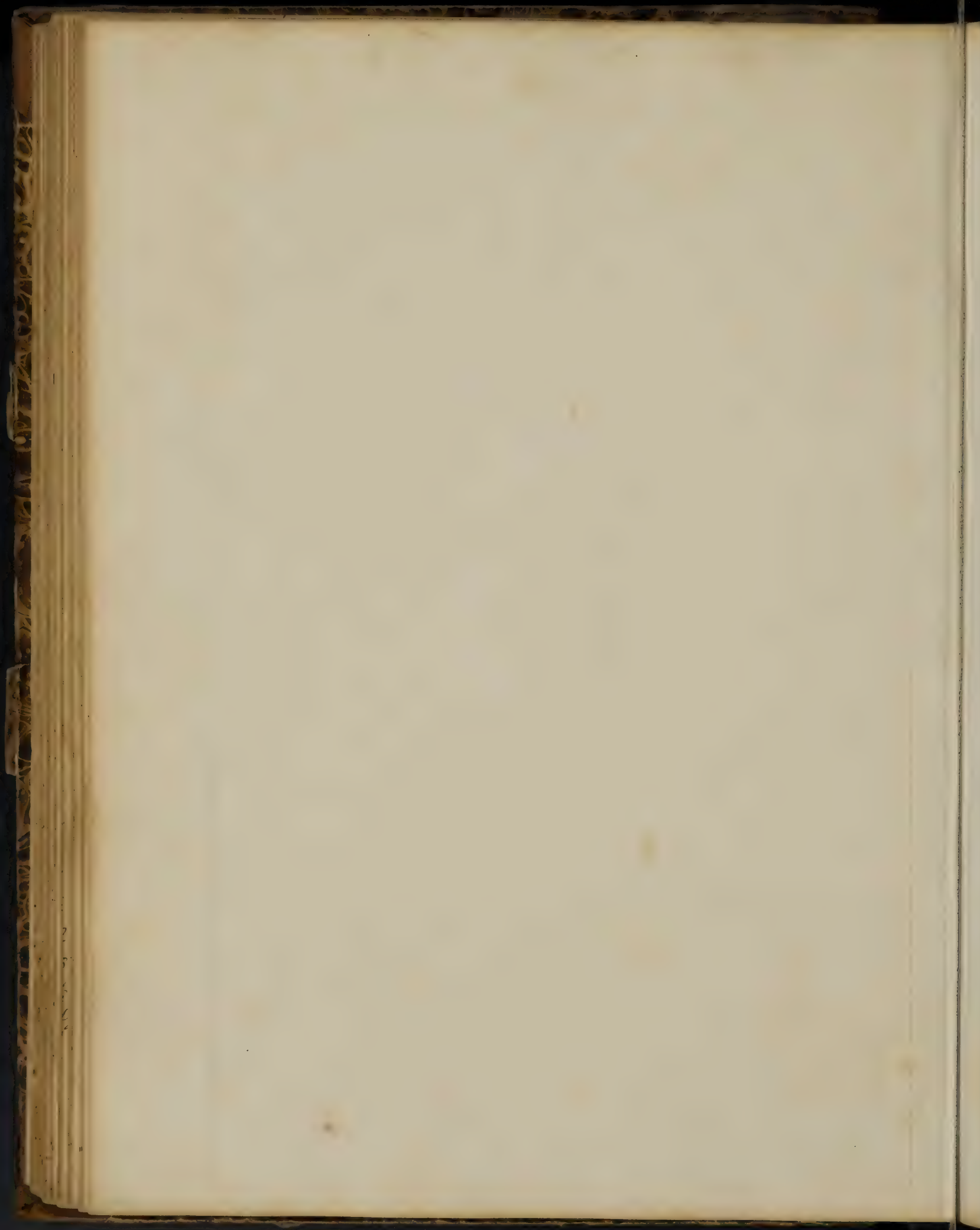


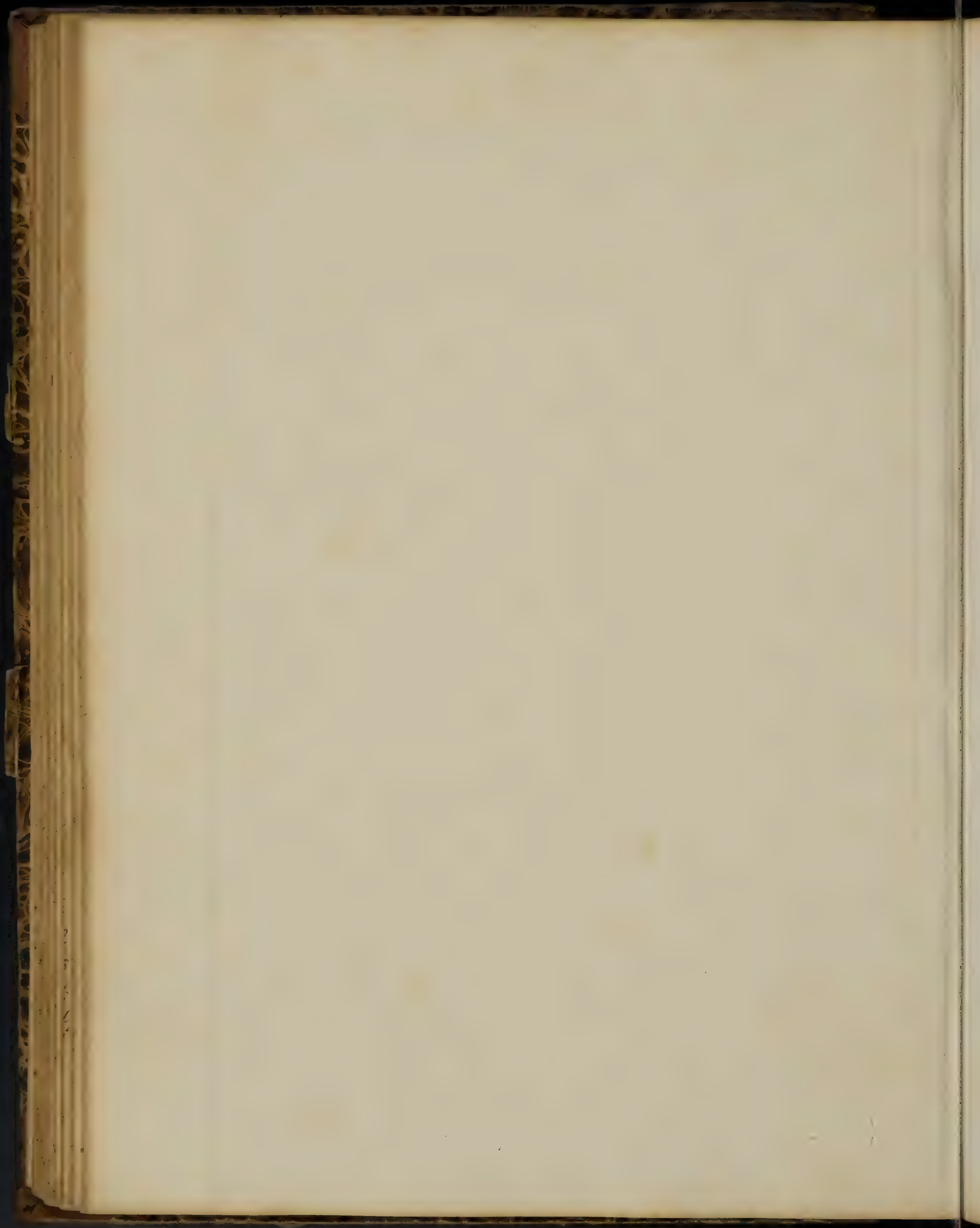
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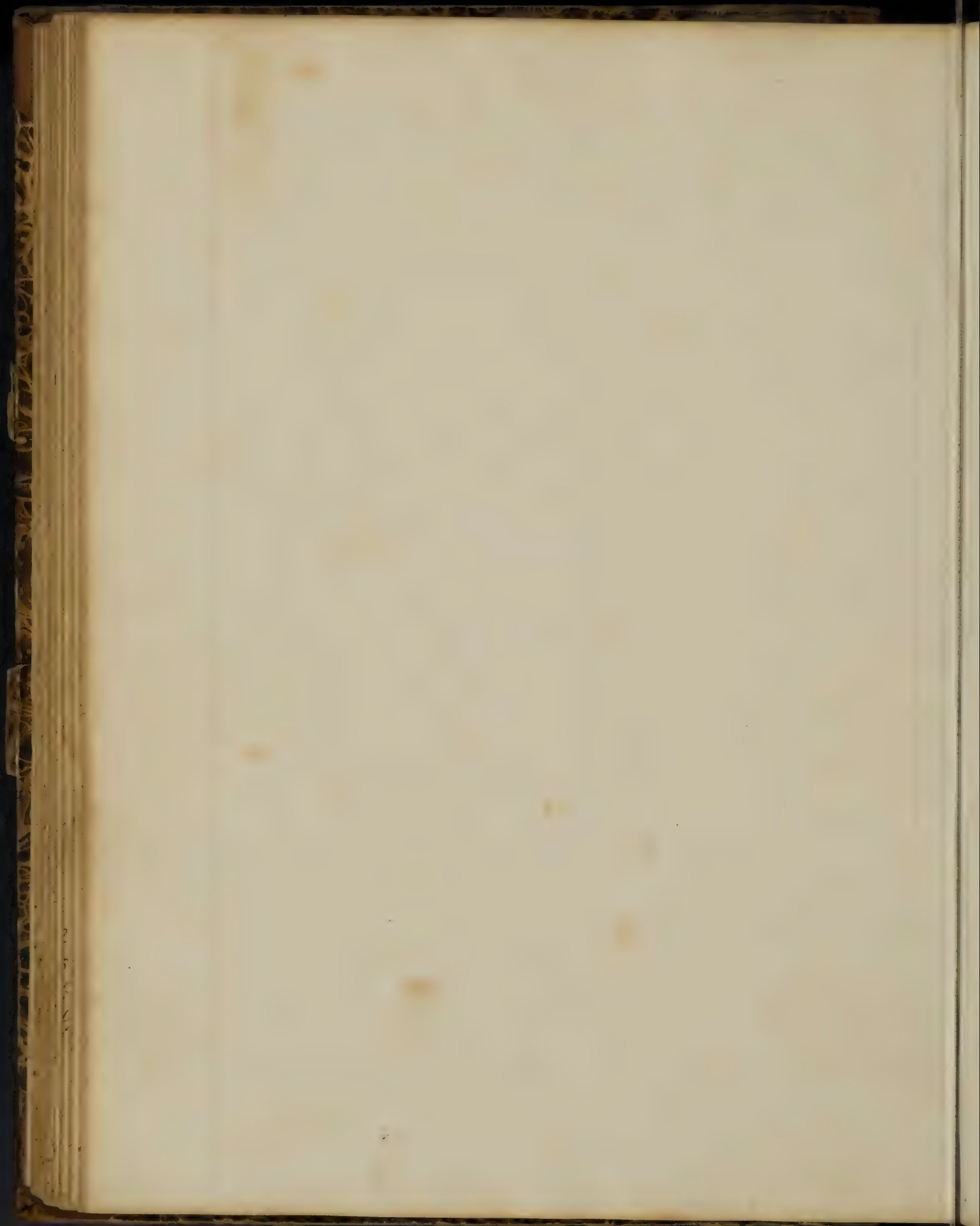
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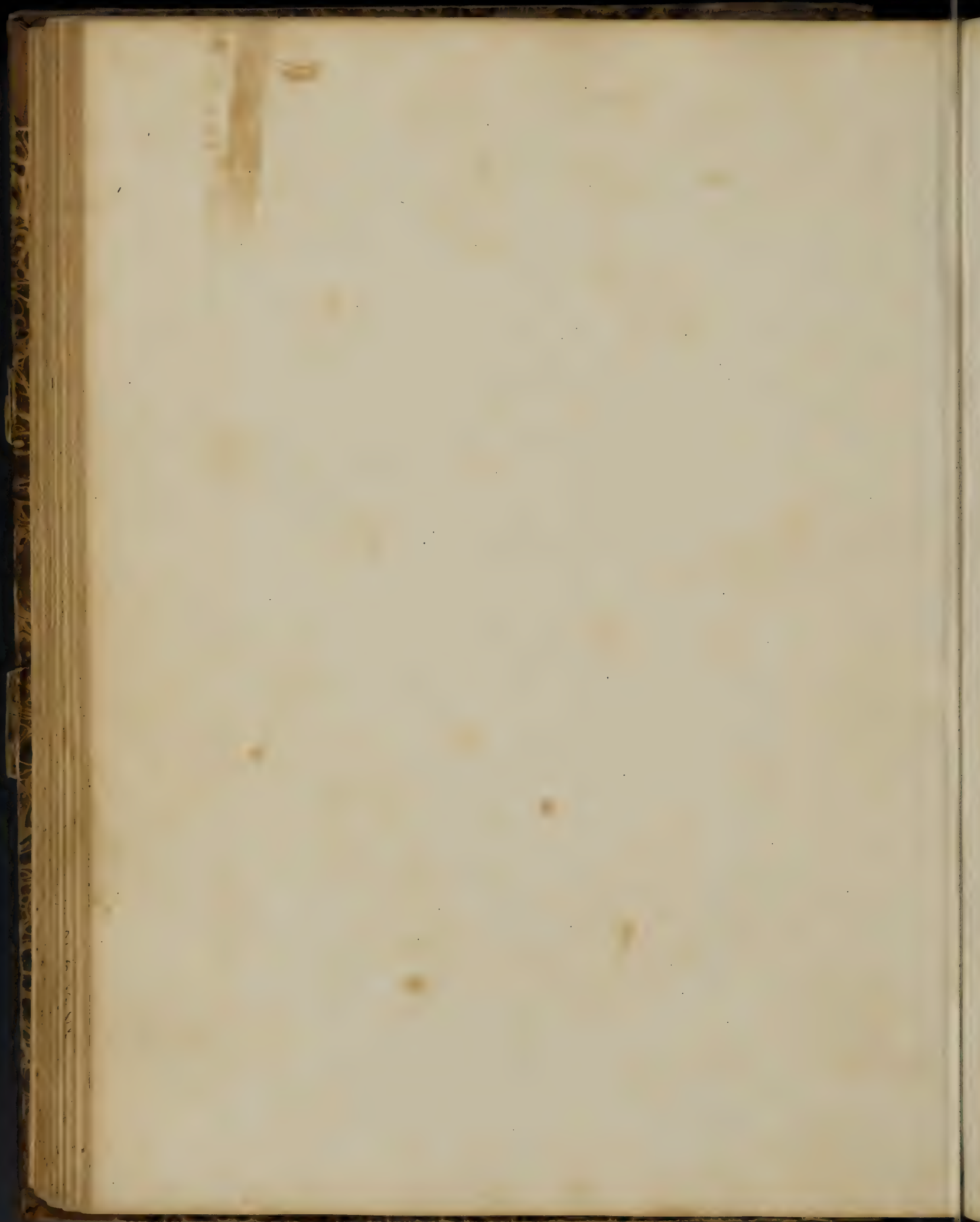




(315-1)



317/



Master & Servant.

A servant is one subject to the personal authority of another, a master is one who exercises this authority.

Four species of servants known to the com. law
I Apprentices. II domestic servants. III Day Labourers & IV Agents of every kind. 1 Bl 427. 7
1 Woodes 464. 9. Loft 1. Salk 666. Slaves are a species of servant unknown to the C. L. Loft 1.

Neither can the local laws of any foreign state allowing slavery be executed in Eng.
Loft 1. — Co Litt. 79 b (W). Salk 424. 626. or 656 666.

Villeins are now also unknown in England,
Loft 8. 3 Sume 307.

On the subject of slavery in the State of Connecticut 2 Root 364. 517. It may be held that slavery was never legalized in that state.

— None will not lie for a slave. An absolute property can exist in the person of the slave. (See 1 R. Raym 1274. Salk 666. (3 Dec 785) 2 Lev 201. The master can have no right in the substance of the frame of the slave. But a slave may be taken on exⁿ & sold. i.e. his perpetual services may be sold.

An action will indeed lie for taking away a slave but it is the same action as where an apprentice is taken away.
Salk 666

Slaves

Master & Servant.

The Ct in Conn^t held that slaves might hold property even ag^t the master. precisely like a minor child,

Our sup^r Ct held that the marriage of a slave with the consent of the master was an emancipation of the slave. for a relation is contracted inconsistent with a state of slavery & this by the consent of the master. This is the doctrine adopted in Eng^d in the case of infants 32 R 356. 22 B R 511. 3 B ac 547. This decision is in opposition to the uniform custom of the state & of other states. The marriage of a wife with a villien did not emancipate either of them - The case does not expressly say that there any consent of the master. but. v. c. Litt 5187. 2 Bl 93:4. If however a wife married a freeman she was emancipated during the coverture, Co Litt 123 a(n). 136 b 137 (b) Perk 314.

It has been a question whether the illegitimate child of a slave was himself a slave. in the civil law *partus sequitur ventrem*. Not so at C. S. in case of villiens 2 Bl 93:4. Litt 5187:8. In Eng^d the illegitimate children of slaves are free. scilicet in these states.

the servant bound for a term of years & Master & Servant
 II apprentices for definition 1 Blk 420. One may
 be bound as an apprentice in husbandry, in trade
 & in the learned professions. By St of Eliz
 the relation of master & apprentice cannot be
 contracted except by deed (& Our Cts have ad-
 opted the rule of the Stat: 6 Mod. 182.

20 Raym 1116. 1alk 68. 3 Keb 304. 2 Vern 64. 492.
 4 Day 189.) a similar Stat exists in Conn. Tit Master & serv^t X

And a defective contract of apprentice-
 ship (cannot be construed into a hiring
 the year, in other words it) is void to every
 purpose except that of making an apprentice-
 ship de facto, -

8 JR 379 Sailors v Rigg, Aug^t 1808. Conn^t

Where the contract is defective the relation of master
 & servant shall exist as to third persons & while the
 parties are in the execution of the contract they have
 respectively the rights & are liable to the duties of
 Master & apprentice, but the contract being defective
 either party may at pleasure dissolve the relation

It has been held that the word apprentice
 must be used in the deed but this is
 now overruled. 3 Rac 456. 1 Burns' justice 57. 8 JR 379
 1 East 533: 4. All other servants may be
 retained by parol. For this is the C & L as
 to all servants & no Stat has altered it.

X By our Stat Father & guardian, ~~of minors~~, may bind
 their apprentices, by deed with the assent of the minor
 expressed by subscribing the indenture, males may be
 bound till 21 females till 18 years of age

Minor, our 1st, having no Father or guardian may
 bind themselves apprentices, by indenture, with the
 approbation of the select men of the town.

Stat tit
Master & v
S3.

Children of paupers may be apprenticed
out by the overseers of the poor, In Ct
we have similar Stat, Here the elect
men with the advice of the next justice
have the power to bind out the children of
paupers to be instructed in some suitable trade &c

All servants except apprentices are entitled
to wages. The law implies a contract
to pay as much the services are worth
where there is no express contract to pay
except in case of apprentices.

1 Bl 428. 88.R. 379.

Apprentices are regularly entitled to
no wages unless there is an express contract
to pay them wages. 88.R. 379. The reason is
that towards apprentices the master
contracts to perform many duties which
are not contracted for in other cases.

13. 5 Eliz. An infant may bind himself
by the contract of apprenticeship. But
he is not liable on the covenants
contained in the indenture.

The only consequence is that while
the inf continues with the master the
party acquires the rights & subjects
himself to the duties of an apprentice.

But the inf may violate the contract
by leaving his master & is not liable
1 Bl 426. Cro E 179. 448. Dory 561. or 578. 5 R 716.
1 Mod 190. In Conn. we have no such Stat.

But if the father of a child is in the
 situation he is bound by his contract. He
 may bind himself to be responsible
 for the acts of the infant apprentice.
 May 500. 2. 18. 18. 18.

It has been held in *Scott v. Shepherd* that the
 guardian joining in the indenture made
 in common form is not liable for the
 acts of the infant apprentice. This supposes
 that the guardian does not consent
 expressly to the acts of the infant.

British officers are not required in *Whitely*
 to bind out apprentices, to enter into any
 contracts subjecting them to personal
 responsibility.

It has been said that the bankruptcy
 put the involvements of the master dis-
 charge the apprentice. But this is not
 so. However the Ct of Sessions may for
 the cause discharge the apprentice
 1 Br 582 14th 149 3 Bac 570

Under the Stat law if Ct any app: may
 be discharged by County Ct for any
 default of the master. The County
 furnish an apprentice for violation of
 duty. In Engl: the Ct of Sessions have
 a similar power. But in Engl: the Ct
 of Sessions have no power except in
 case of apprentices bound out by public
 authority. 1; 36 426. 2 Bac 580.

If an apprentice make with the master
 contract of the master. He may not for 3 Bac 580
 the cause turn him away - but he may
 have his remedy in the contract -

By deed an apprentice may not be
released. The contract is for a long
time by custom of London.

1 Roll 310. 1 Roll 311. 1 Roll 312. 1 Roll 313.
1 Roll 314. 1 Roll 315.

And the rule is so strict that if
an apprentice is released by deed
the deed is utterly void, & the
ground of being unreasonable.

When an apprentice is released by deed however tho'
it does not transfer any right int
implies a covenant which binds the
master in favour of the apprentice,
that the apprentice shall serve the
master & if the apprentice does
not serve the master is liable on the
implied covenant.

And if the apprentice serves under
the release he acquires all the rights
of the apprentice. See in a
settlement &c. 1 Roll 310. 1 Roll 311.
1 Roll 312. 1 Roll 313.

But the apprentice can in this case maintain his action on the indenture of apprenticeship, &c.

Further the Master is bound to keep the apprentice under his own care & may not send him abroad even to improve him unless there is an agreement to that effect or unless the nature of the employment requires it, 1 Allod 236 12 Do 446. 2 Co 134: 5.

If the master dies during the term his estate has no right to the services of the apprenticeship & no control over him, the right is not assignable the contract is fiduciary. 12 Ves 25.

1 Salk 68. 1 Stra 1267. 20 Raym 683. The contract then to teach & serve. To govern & protect & obey are fiduciary.

It has been held that the Master is bound to teach or procure to be taught but this is denied. 1 Lev 177 1 Sid 410 S.C. - 2 Stra 1267. Watson P 29. Salk 60.

But in the death of master he is not a
as the law bound to furnish repairs
during the term? According to the
weight of authority where the
master's contract is absolute, the
rule is bound, this part of the
contract is not fiduciary. 3 Ch. 40
1 Kib 701, 220. 1 Ed 210. 20 C 111 1 Day 30

This rule has been disputed. The
consider of furnishing the necessities
is the owner but the services are
discharged. However the rule is on
principle correct. The master might
have made provision in the indenture.
It is analogous to the lessee's covenant
to pay rent where the house is
destroyed by fire &c.

The rule is not binding on the master
if the contract is not absolute and the master
is not bound to furnish repairs.

If however a premium is given to the master who agrees that the apprentice shall furnish securities or pay back a proportional part of the premium to the English Ct of Chancery where the master dies early has decided that a greater part of the premium shall be returned than was stipulated in the indentures. This is going very far & is making a new contract.
 1 Vern 460. 1 Atk 119.

If so where a master turns away an apprentice now for diff. reasons he has been compelled to restore a part of the premium. 2 Vern 64 1 Atk 149.
 3 Bac 150.

And in Engl. the Ct of Sessions exercises the same power where they discharge an apprentice, sed in where did they do so require that power. 1 Bl 410. Inst 67. 490
 In 17th & 18th never exercised such a power

Whatever an apprentice earns by his
labour during the term belongs to
the master & they whether the app^r
earns it with or without the consent of master
32a 112. No 10 11/12 12 Mod 415
C. 200 1 W. 41. 13 And the master
may sue in his own name. If the same
rule holds of apprentices de facto or
by 100 14. an app^r de facto is while it continues
precisely like one de jure

If a specific chattel earned by the
apprentice belongs to the master (1b)

(common 2)
(57, 52 & 12) When a man is not bound in case of any
other servant than an apprentice - but if a married woman is
bound away in matrimony all the property
of the husband is in the wife. The rule requires that
the master should know that the person
employed was servant. 2 another rule 11/12
is for 100. 2 100 67. 3 100 56. 100 100 56
A freeman is a servant within
the rule 1 W. 409/10

For taking away a servant with force an
action of trespas per quod will lie. 105
Id Raper 1117 Lill R 380 2 BR 167 Id Raper 1052

In comp the deceit is for enticing &
in trespas is it arms & the action is
suppated — This must have been a oversight
trespas was not a proper action. Comp 05
(Lillies Entries 72.)

By the law of Engl^d apprentices gain a
settlem^t in the place where he served the
last forty days. Not so in Conn^t. Minors in
C^t cannot gain a settlem^t by commorancy.

II. II. Clerical Servants.

When one is retained for a period not limited the hiring is for a year, 1 Bl 425 Febz 186 3 Bac 546.

This rule was never adopted in Ct. at least practically. We have had no disproof.

But there are cases for which the master may dismiss the servant 1 Bl 425.

1 Bl 425

The master has the right to discharge his servant at any time without notice.

If the master has the right to discharge his servant at any time without notice, then the servant is not bound to serve him for a longer period than he chooses to serve him.

It is a well settled principle that a servant may be discharged at any time without notice.

II II To Day labourers

There are no rules very peculiar to this class except such as are introduced by Stat in Engl.

Day labourers may be retained by hand
& may be employed for any period of
time —

Of Agents.

The agent is in relation to his acts only as affect to copy of another 1 Bl 427. 1 Woodr. 469. Am 252 197. The principal has not the same full control over this class as over other servants. They are not subject to the personal control. They are bound to act for their employer according to their contract. —

They ought strictly to pursue their commission, for their own sake

1 Woodr. 469. Coman Dig tit much 1 B.

A Factor is a foreign commercial agent. A Broker is an agent residing in the same country with his principal,

A Factor has a full lien on the goods of his principal in his hands, for a full balance due to the factor on their account, as Factor & principal.

But by surrendering the goods voluntarily to the principal the lien is gone forever.

March 28. 1907. 493. 2nd R. 1154. 1st 4.
2335. 2nd air. 106. 584. 2nd 22. 523. 12

There are other of goods at a time,
it is usually a small number of
a particular purpose, or large quantity,
on this the last one. The last
deposit is in the bank.
6th Dec. 1881. No. 108. 2nd Dec. 1881.

A Father has the same lion upon a
 paper of manuscript offered by him
 self for his country. And in the
 event of a sale he may receive.
 Mar. 2nd. 1811. 494.

He has the same lien on the price
due for goods in the form of a
purchase or credit. and he may
compel the purchaser in a suit at
law to pay him the price of the
goods.

And he has a lien upon and may retain in his power the goods of one or two of your trustees, as desired. For his commission on the demand bill of other parties or for an commission upon that money I am sure from his former paper. - which.

There can be no lien until the goods
9 Ver 177 have come to the actual posⁿ of the
1, 456 134 agent. No pledge can be created by
221 119 bill by actual delivery.

1 Ver 170 If the agent gives more or purchases less
221 119 than directed, the principal may disclaim
11 Ver 100. So if he sells at a less price than his
11 Ver 100 commission warrants, he must make the
11 Ver 100 price good. & this rule is said to
11 Ver 100 hold in case of perishable goods. But
221 119 the last rule seems now to be qualified
3 B & P 419 if not entirely contradicted, & I think
11 Ver 100 the first rule may be correct except
11 Ver 100 where usage at the place of
11 Ver 100 consignment creates a diff^t rule.

1 Ver 100 If a factor sell on credit when he is
11 Ver 100 not authorized, & a loss happen in
11 Ver 100 consequence the factor is liable. But
11 Ver 100 in 1 B & P 419 & Miller 456:7 this rule is
11 Ver 100 qualified where usage &c.

Under a commission del credere the agent is, at all events, liable for the debts due to the principal for goods sold under the commission,

15 R 110
3 B 4 P 495
16 am p 444

A Factor may not pawn the goods of the principal for a debt of his own & the principal may sue the pawnee in trover with tendering to the pawnee or the factor the amt due to the factor. The lien of the factor is, however, may not be transferred. — — — (Pickering & 1 Buss 15 East 38. To Eltonborough from Wheaton to disapprove this unless — — —)

32 R 604. b
7 East 5
1 B 4 P 441
the 1175
Common Law
March 18
Simpson 601

A Factor, who has sold the goods of the principal on credit may maintain an action in his own name to recover the debt. Ordinary servants cannot do this. The factor always contracts in his own name.

15 R 112
Comp 158
7 R 359
Bale B
1 R 3167
202
1 R 112
2 B 4 P 497

This rule holds in genl. of all
the commercial agents & in this in genl.
12th 11th contract in these own names & the
2nd 14th law merchant governs.

12th 11th So an auctioneer may sue in his own
22nd 9th name. He is a kind of Broker &
contracts in his own name,

Still if the principal not indebted
to the factor gives notice to an agent
purchaser to pay to him. The purchaser
must at his peril pay to the prin.

12th 11th. Exp. 107 & 108 104

If the purchaser cannot determine
whether any thing is due to the factor
he may bring a bill in Equity, agt
both to compel them to interplead.

If the prin^t is indebted to the prin^t comp²⁵⁷
factor. The latter may compel the purcha²⁵⁵
to pay to himsf.

2 East 217

3 B & P 495

1 Camp 440

In all these cases where the agent may
see the principal may also see 72 R 359
360 (nat) 126 R 81. 1 Ch 265.

An auctioneer is never liable for
selling goods to the highest bidder
tho' sold for less than a sum directed
If however he is directed not to
set up the goods under a given sum
& sells at a less price the auctioneer
is liable. Comp 395.

An atty has a lien on the papers
and judg^t of his client for his fees
& may direct the adverse party to
pay the costs to himsf. But this
right is subject to the equitable
claims of the adverse party. Ex
where the adverse party has a set off
ag^t his client whh he can set off
in Equity. The atty cannot have
a higher right than his client.

12 R 24. 122. 217. 657. 226 R 440. 587
Long 100. 238. 2 R 826. 41 R 123. 650 361.
456. 220 70. 571. 1 East 464.

Master &
servant.

This lien in favour of an atty does
not hold in favour of a counsellor
There is no lien for counsel fees where
both characters are united in one
person.

an atty who executes a instrument in the name
of the principal binds the principal only & an
attorney who executes an instrument for another who
executes it in the name of the principal

25 R 177

13 R 111

attys 98.

72 R 207 An agent cannot bind his principal by the ex-
4 Do 313 ecution of a deed unless his authority to do it is
2 R 1. given by deed. For a deed is an estoppel
compndy No one can subject himself to an estoppel
Attys 15. except by deed,

An atty for the public contracting as such is
not liable on his covenant. 1 R 172. 674
1 East 582. 1 Root 19. There is no difference
between this & the common case of an agent.
Formerly contended that as the Government
could not be sued the atty must be liable
(Sexton's case Supreme Ct of U.S.)

Rules applying in genl to all servants.

It. When Master is bound by the acts of servant. Those acts of the servant whh are done by the exp^{ress} or implied command of the master are in legal contemplation the acts of the master. 1 Bl 429 2 Bk 442.

Whatever the serv^t does by the exp^{ress} command of the master, or whatever the master permits the servant to do in the ex^{er} of his master's business & what the serv^t does within the scope of a genl authority given by the master is the act of the master. Hence a contract made by the serv^t in the name of the master under the authority of the master is the contract of the master.

3 Bae 559. 2 Cr R 411.

If a serv^t is cheated of the master's prop^{erty} the master may maintain an action in his own name. Cro J 223. 3 Bae 559. 10 Roll 98.

If the serv^t is robbed of his master's prop^{erty} in the master's absence. Either may have an action on the st of Winton. Talk 613. 3 Mod 289. 4 Ld. 303. 11 Dd. 12 Ld. 54.

It has been said that the serv^t may sue because he may be liable over to the master but this is not in genl true. The reason is the goods are considered as the servant's goods as ag^t all except the master, "Darlow"

Master & servant
since in such case the recovery of judge
by one is a bar to the other. the
commencement by one will ^{not} ~~not~~ bar the other
Satch 117.

In this case too the court declares as
for his own goods. 2 Sanch 174. Balled 119
Sack 117. 2. Bac. 69

141
141
141
That if the robbery was in the presence
of the master. the Master only may sue for
the taking is deemed to be from the
person of the master,

If the master's money is gained from
the court by an illegal contract the master
may recover it back 2. Bac. 229.

But if a servant pass on the master's
money to one ignorant of any fraud &
who supposes the money belongs to the
servant the master cannot recover the
money. Where one of two innocent &c,

If an innkeeper's serv^t sets a guest
the innkeeper must be liable - Not so of
ordinary serv^t. 1 Bl 426 1 Roll 2. 8 Co 32. South.

If a serv^t does an unlawful act by the
command of his master both are liable & both
are principals in trespass. 1 Bl 430. 1 Wils 328.
Cip Dig 580. 8.

But if a serv^t by the command of his
master becomes instrumental in a wrong of
whh the serv^t is ignorant the serv^t is not ~~wrong~~
liable. Ex serv^t keeps the key of door in whh
one is falsely imprisoned.

But this rule can apply only to
cases where the serv^t does acts whh are
in themselves openly harmful. If the
act is in itself unlawful or if it constitutes
a forcible injury in contemplation of law
the serv^t is still liable civiliter at least.
2 Bl R 592.

But the serv^t may have his action
for indemnity ag^t the master where he
acts ignorantly & is subjected

Master. Those acts of the serv^t which are not done
servant, by the master's command express or implied,
are not deemed in guilt the acts of the
master. 3 Salk 282. 52 R 533. 1 Bl 421.

If a serv^t while employed in the
master's business commits a wilful injury
to another the master is not liable for
it, this is not done by the command
express or implied of the master. 2 W 801,
not act as agent. 1 East 106. 1 B & P 472.
Salk 441. 3 R 762. 2 Do 154. 3 Bac 562:3.
11 Woodes 465. Vide post

But if a serv^t while employed in the
service of his master & engaged in his business
injuries another by ignorance want of skill
or negligence the master is liable, every
master must at his peril employ skilful
& careful serv^ts but he is not an insurer
ag^t the unwise passions of serv^ts. In the
first case the serv^t does not act for the
master in this he does. 65 R 115. 52 R 645.
2 W 442. 1 East 166. 106. 1 B & P 431. Salk 441.
2 Raym 739. 1 Woodes 465. 1 R 446. 1 B & P 47.
3 Bac 562.

If the apprentice of a surgeon injures
a patient in attempting to cure him from 2 Rol 693
ignorance or neglect. The master is liable 2 Pac 566
for this mala practi—

This distinction, as to the master's
liability, between wilful and negligent misfeasance
committed by servants, has been lately
settled on fully understood. and the distinction
of the master's liability upon the subject
is as follows.

I. In 1794, 6 D.R. 125. Lord Kenyon Master
for his servant's wilful misfeasance
as to 2 D.R. 125. Held that the master was liable
because the servant was the proper person.
And as to the master's liability for his
servant's negligence.

II. In 1795, 6 D.R. 125. Lord Kenyon Master
for his servant's negligence as to 2 D.R. 125.
Held that the master was not liable
because the servant was the proper person.
And as to the master's liability for his
servant's negligence.

III. In 1800, 6 D.R. 125. Lord Kenyon Master
for his servant's negligence as to 2 D.R. 125.
Held that the master was not liable
because the servant was the proper person.
And as to the master's liability for his
servant's negligence.

IV. In 1800, 6 D.R. 125. Lord Kenyon Master
for his servant's negligence as to 2 D.R. 125.
Held that the master was not liable
because the servant was the proper person.
And as to the master's liability for his
servant's negligence.

When the master is liable for a facile
injury & the injury is not done by his
direct command care is the proper remedy
ag^t the master. The master is liable on
the ground of negligence in employing
an improper servant.

220 R 442. *Savington v. Roome* D.R. 125.

21 R 134. Deputy Shff an exception. vide *Shff & Jailors*.
2 R 102. *Shff & his* Shff & his deputy are in person
in law & besides the return is in the name
of the Shff (in Eng^l)

11 R 240. If a serv^t employed in his master's business
employs another serv^t to assist him & by the
unhappiness of the latter an injury is done.
the master is liable. How does not appear
in this case to have been any authority given
to the first servant to hire another. But
in. & it is decided that the intermediate
serv^t is not liable.

When the wilful act of a serv^t involves
 a violation of a contract between the master & the third person, the master is
 liable on the contract tho' the act of the serv^t is wilful. Ex a Blacksmith's 910
 serv^t lamer a horse sent to be shod & doing Jones 73:4
 it wilfully the master is liable —

This is no exception to the gen^l rule
 the master is not liable for the act of
 for a wrong, but he is merely liable on
 his contract.

The Postmaster is not liable for the
 wilful or negligent acts of his under
 Post masters. 128 Rym 646. Carth 487. Comp
 R 100. Comp 754. 764. Salk 17. Exp 624.

We ought not to be liable more
 than the President & Senate for the negligence
 of the Post master gen^l.

But the Post is liable for his own
 negligence,

3 Wils 443
 Comp 765
 2 BLK 406
 Exp 613

Master The master is bound by the contract
and if the serv^t made in his behalf
if made within the scope of the
serv^t authority.

1 Vern 43. 243 Comb 450 Le Rayn 234
124 11 12 R 531 3 Leo 757. 1736 457. Waller 398
124 11

It is not sufficient authority to enter into
one individual contract or to any
number of specific contracts but
which extends to all of a particular
kind or to all of a class. Kind
either of these may be implied. Either
may be implied from the master's usual
or frequent practice. — If the master
stands by & hears the serv^t make a
contract in his behalf a special authority
contract is implied.

1 BB 430. 1 Polk 1312

When the master has usually
entrusted the serv^t to purchase
him but has always furnished him
with money. The master is not bound
if the serv^t without express authority
takes up goods on credit. 3 Call 234
12. howe 17. "Continue"

✓ If the master has usually or frequently permitted the serv^t to take up goods, 1 Bl 430
on credit he gives the serv^t a credit
with the person with whom he & as the
case may be with the public,

And if the master has once for a debt 1 Bl 430
contracted by the serv^t without authority,
without expressing disapprobation, this gives
the serv^t authority to purchase goods of
the person to whom he until the master
expressly forbids

And if a serv^t without any authority
purchases goods which go to the master, 3 Sal 274
and the master is liable to pay for Com 450.
the goods. Also by using the goods 3 Kel 625
gives an agent subject. Ch 26.

But suppose a master lends money
by a serv^t to whom no credit has
been given & the serv^t embezzles the
money & procures the goods on credit
& the goods come to the master's use.
The books leave the question doubtful
2 Ray 224. Black 234. 3 BR 760. 10 Clod 110
3 Kel 625. But I think the master
is not liable. The use of the goods
in this case does not amount to an
implied assent to a thing the existence
of wh^{ch} he did not know — Peake R 48.
1 Esp R 214. 1 Conyn C 221.

Exp 70 But where a serv^t has made a
1 Comyn C 1 purchase on the master's credit with the
2 Ray 224 master's authority, & the master afterwards
lends money by the serv^t wh^{ch} is embezzled
the master must bear the loss. If debt
was here clearly due before the money was
sent & then the case is as if the master
had contracted the debt himself & sent to
it supra,

But when the master has given a credit to his serv^t he may terminate it by a notice to the person to whom the credit is particular & by a public notice where the credit was public. But a notice to the serv^t alone is not suff^t. Whether is the credit determined by a private dismissal of the serv^t until the dismissal is known the credit continues - This in all cases where the serv^t has a credit the master cannot discharge himself except by a notice as public as the credit
 32 R 760:1. 30 Mod 109. 12 Qo 346. ChB 26:7.
 Peake R 42. 154.

If a serv^t in selling the master's goods by the master's authority. warrants. the master is liable unless he expressly forbids him to warrant. if this is done the master is ^{not} liable unless the serv^t has gen^l authority to warrant.

45 R 177
 3 De 757
 Stra 515
 653
 Talk 289
 10 Mod 109
 Ex R 2650.
 Ex R 111.

But when a serv^t acts within the gen^l scope of a gen^l authority an express prohibition to warrant if not made known to the purchaser is not suff^t ex gra. a serv^t in a livery stable has been in the habit of selling & warranting
 32 R 760:1. 10 Mod 109. ~

the distinction between a quit &
a special authority applies to all
cases of contracts made by serfs.

There are two cases in opposition
as it seems to the principle which
I think are wrong, or that there
is some defect in the report.

1. 144. 2. 143. 3. 140. 4. 141.
2. 141. 3. 142.

It has been said that if the owner
of an animal have sends his serf to
sell him at a fair, directing the
serf to conceal the defect the master
is not liable. 1. 141. 2. 143. 3. 140.
4. 141. 5. 142. unless the serf was directed
to sell to a particular person. but they
seem to be wrong.

If then a serf in a store, a clerk to
a manant to the master is liable. there is a
quit authority to sell. & this includes at
all. 1. 141. 2. 143. 3. 140. 4. 141.
5. 142. & I think that a private
authority not to manant in this case is
not suff. to exempt the master. (Sey stable
case ante)

When the master is bound the serv. in 1 R. 45
 serv. is not bound. unless he expressly 2 R. 563
 binds himself.

But if the contract does not bind the serv.
 master as when the serv. has not authy
 the serv. is bound,

But the action if not for fraud
 must be I think, on the implied contract,
 not on the express contract for this does
 not purport to bind him,

His wife child relative friend or
 neighbor acting under a serv. a
 special authy is his serv. quoad hoc
 1 R. 430. —

518p.734 A master in genl is not bound for
518p.734 expenses incurred by his servants sickness
16.11.270 With regard to apprentices the
Banc. 47 usage is diff: much however because
the usual indenture contains a
clause to provide in sickness & in
health. & this rule does not apply
to slaves.

How far serv^t himself is liable &c.

The acts done within the master's sphere a
implied command the serv^t alone in doing is
liable. The rule extends in civil to all cases
in which the acts of the serv^t are done not
in the ex^t of the master's business 1732 431.
3 Bae 562. 1 Salk 11. Cro 175. Comp 406. Esp 603.

In other cases, stranger injured by the
act of a servant may have their remedy
either ag^t the master or serv^t. It is a
gen^l rule that if a serv^t employed in
his master's business, does an injury thro'
negligence want of skill &c the serv^t is
liable to the party injured. for he has
a right to consider the serv^t as the
author of the injury & need not inquire
into the domestic relation of the serv^t

Ste 1013
1 Mil 328
C 2 R 411
15 arg^t
Ka. m 220
Esp 6550.0

But the serv^t is not always liable
for these accidental injuries if the
injury is matter of controversy between
the master & the stranger the master only
is liable. Ex a Blacksmith's serv^t injures
a horse in shoeing him. Bailor serv^t &c
Comp 406. Esp 586. Salk 603. 1732 431.

The injury done is in contemplation
of law merely a breach of the implied
contract between the master & stranger

But the case of a ship master is an exception to this last rule. i.e. the ship master is liable for an injury whh is a mere breach of contract between owner & freighter. Falk 440. Carth 58. 1 Vent 190. 238 Raym 220. 6 D R 125. Convenience & necessity require this rule, owner frequently distant.

The Bill of lading is signed by the master & thus he becomes party to the contract of bailment.

Part 101 And if an agent commits a wilful tort the agent is in all cases liable. The wilful act is not in performance of the contract. & if the master himself should do the same thing the injured party might sue the contract & ~~also~~ in tort.

If an agent of Government receives too complex much ~~indeb~~ up will not lie agt the agent

But if money is extorted by an Officer he is? be liable for the excess in indeb. up. Comp 112. Distinction the same as in the case of common charter serv!

If an atty for a Plf after a non-suit clandestinely enters a judgment for the Plf the atty is liable for the injury. Esp 2011. 16 Att 15 the act is wilful, 1 Moq 209 233 595. 3d 563.

A servt is liable to his master for all neglects & for all wilful wrongs of the servt. 3 Bac 64 for which he has been subjected to by which he is directly injured.

If the servt lands his master's goods before the duties are paid & the goods are confiscated, 1 Cro 160 10 Mod 143 3 Bac 65

But for a bare breach of the master's order which occasions no injury. No action lies. but if the servt is mewed the master may chastise. 14 1 Sid 298. 3 Bac 564 1 Lev 188. 2 Keb 88 2 Wils 325 4 T R 2000. Esp 2017.

to Mod No 4000 2 Pac 164 1st Payment

12R 156' 264x164 Kilb 116 2 Qth 1083, 104000, 109.

no contribution. Ward 164+. 8 J.R. 186.

Master's authority over the Books say in my genl term that the master may reasonably chastise the servant for disobedience to him. 17 M 428. 120 C 179

This rule does not apply to all servants. 120 C 179 2 K 673

The chastisement must be reasonable. 17 M 428. 111. 130. 200 d 167 1 Do 120

China children are servants within this rule. 17 M 428. & in a qualified sense to day labourers, Fitz 168. But Agents cannot be within the rule.

Indeed the rule can extend only to those servants who belong as servants to the master's family. to those who are under the domestic government of the master, minor menial servants may be corrected but a day labourer of full age cannot be corrected. if he is corrected he is entitled to his discharge by the proper authority.

The mere right of correction cannot justify a man. 200 d 167. 1 Do 120. 218. 330. 3 Bae 366.7.

This right of correction is personal
907 that & cannot be delegated: The master
200d 167 may send the serv^t to school & the
L Rayn^r school master may correct. but the
310 pedagoge does not act under a
Stra 53 delegated authority from the master
Cra 500

1400k III, If a master in correcting a serv^t by
certain means kills him he is guilty of
162. of Excusable homicide if manslaughter
negligent or of murder as the case may be,
110d 167 For distinction vide law of homicide
170ab 454

The enticing away a serv^t is only a civil tort & injury. But a Stat of Conn has made it a crime subject to the penalty of \$100. Conn. 66.

6 Mod. 182.

1 Wood 469.

3 Dal 191.

3 Bae. 565.

If a serv^t is beaten by a stranger & the master loses the service he may maintain an action with a *per quod*, but this does not oust the serv^t of his action for the immediate injury. 9 Co 113 10 Co 131. 2 Buls 191. 1 Sid 175. The master must allege the loss of service. Crof 618. 2 Rol 112. 3 Bae 568.

Within this rule minor children are serv^{ts} & children of age may be. On this principle depends also the action for seduction.

If a stranger beats another's serv^t so that he dies the master has at C & L no remedy. the civil offence is merged in the crime. 2 Geo 9. 40 Raym. 339. 2 Rol 568. 3 Bae 568. This rule does not hold in case of slaves in this country, & perhaps not at all in this country.

If a surgeon intentionally injures his servant
36002 in an action has the action per quod? —
1 R. 291 If the servant is injured by the
36051 negligence &c of the surgeon on a writ principally
1 R. 294 the master has the same remedy. See Raym. 214
2 Wils. 359. 1 East 248. E. 1160. 1 R. 290 But there
is nothing in force on the subject in the
books.

36011 1745 In case of settlement if the master has
1. 36012 387. recovered full satisfaction of the servant the
servant may plead this in bar — only one
satisfaction can be had.

The master may assist the serv^t in maint^y
law suits. 3 Rot 115. 1 Bl 429.

A serv^t may justify an apt^t in defence
of his master 2 Bl 407. 2 Rot 46. 1 Bl 429.
3 Bac 568. But he cannot justify an
apt^t in defence of his master's wife or child.
The right grows out of the relation
of master & serv^t. the wife as such is
not mist^r.

Serv^t cannot justify an apt^t in defence
of his master's goods, unless they are on
his keeping. 3 Bac 568.

Master may justify an apt^t 4 B in
favour of his serv^t the authorities are
divided. principle in favour of the
m^r as here expressed. It is 5^t the
master may have an action - But this
may be said of every right he has -

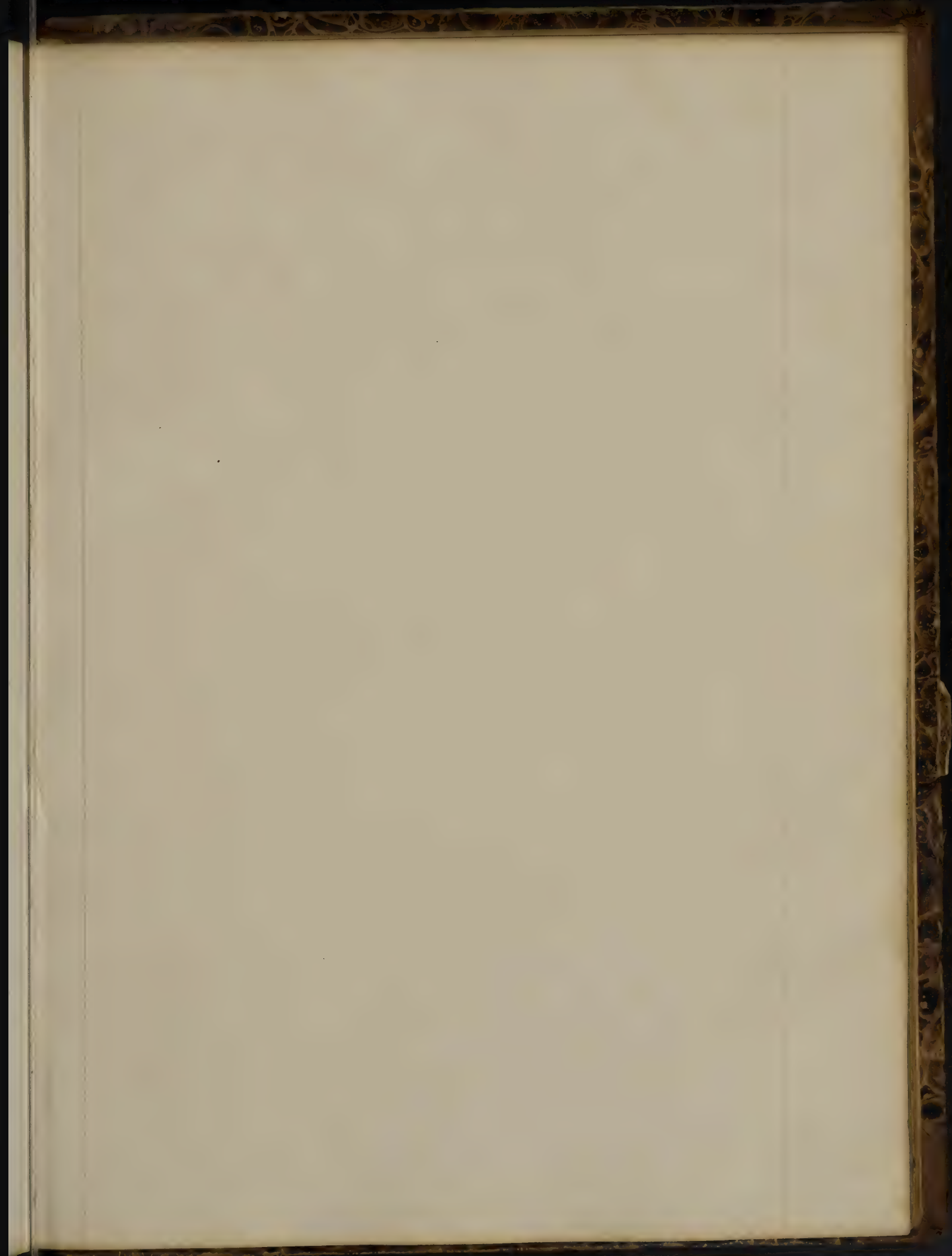
2 Bac 561
2 Baym 2
2 Bl 407
1 Bl 429
Lam 1148

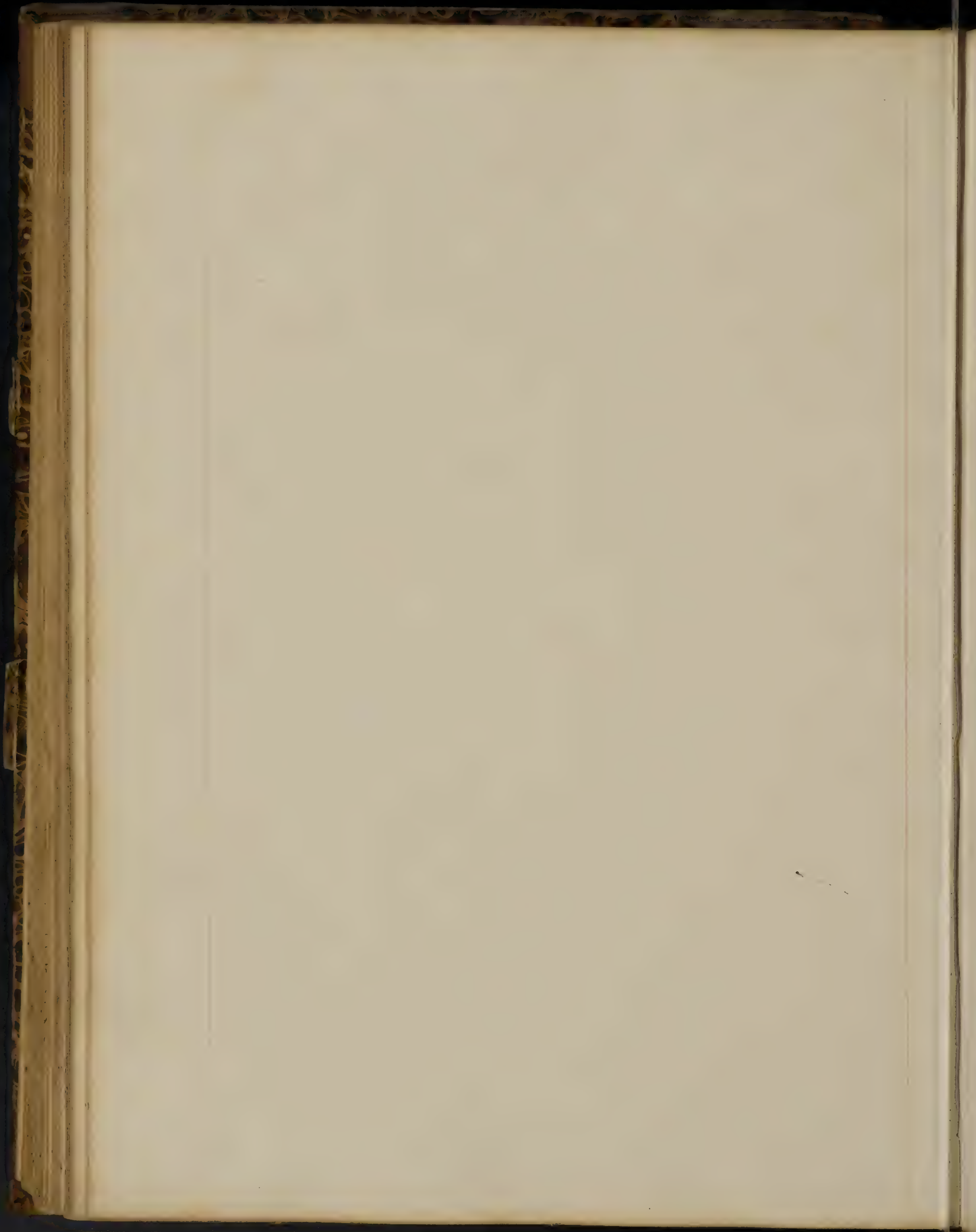
These rules extend only to those serv^ts who
are part of the master's family & under
his domestic government.

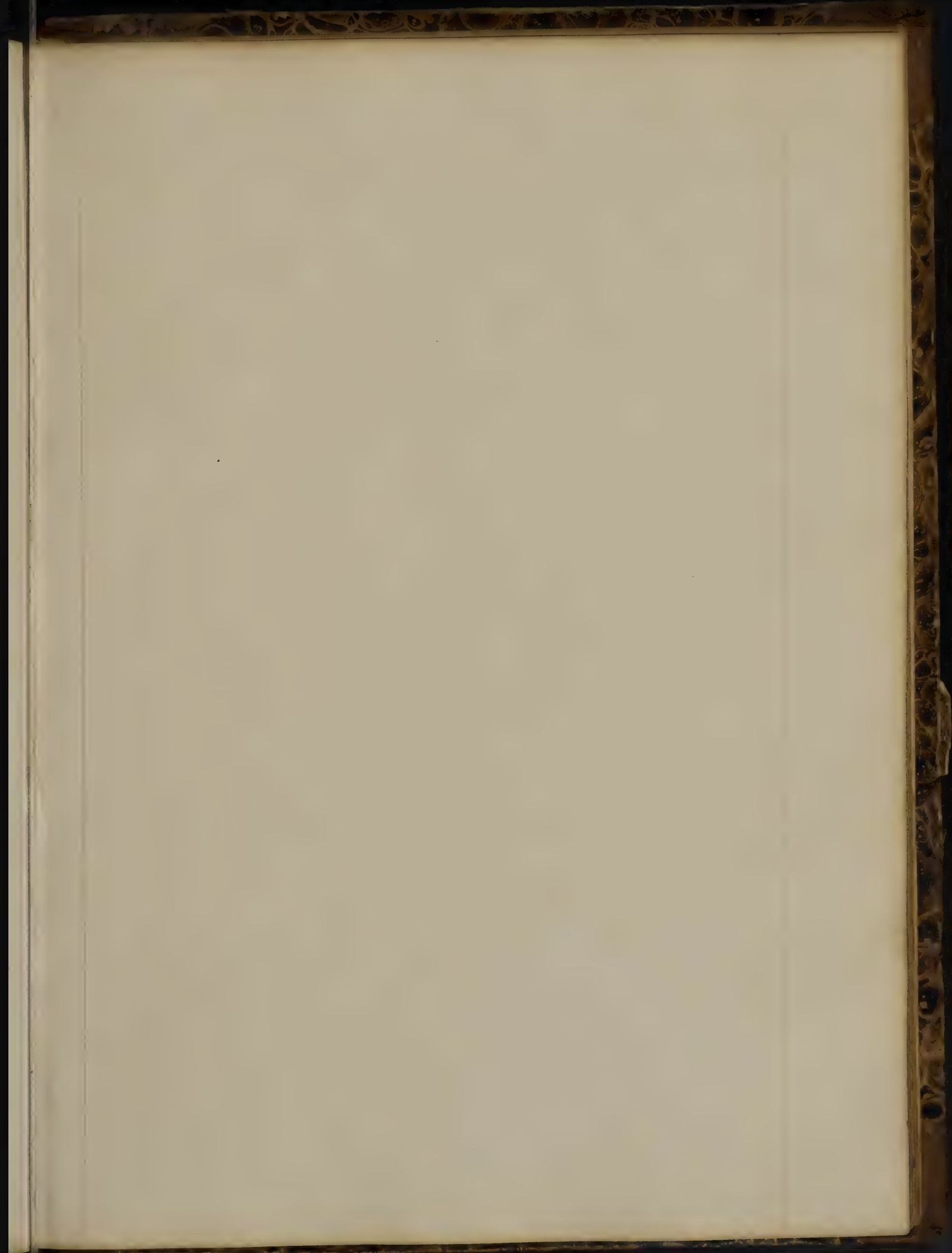
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3626
a serv^t cannot avoid a deed made
under duress if the master the relation
is not suff^{ly} intimate — ex i^o master
is confined & the serv^t gives his deed to
release him.

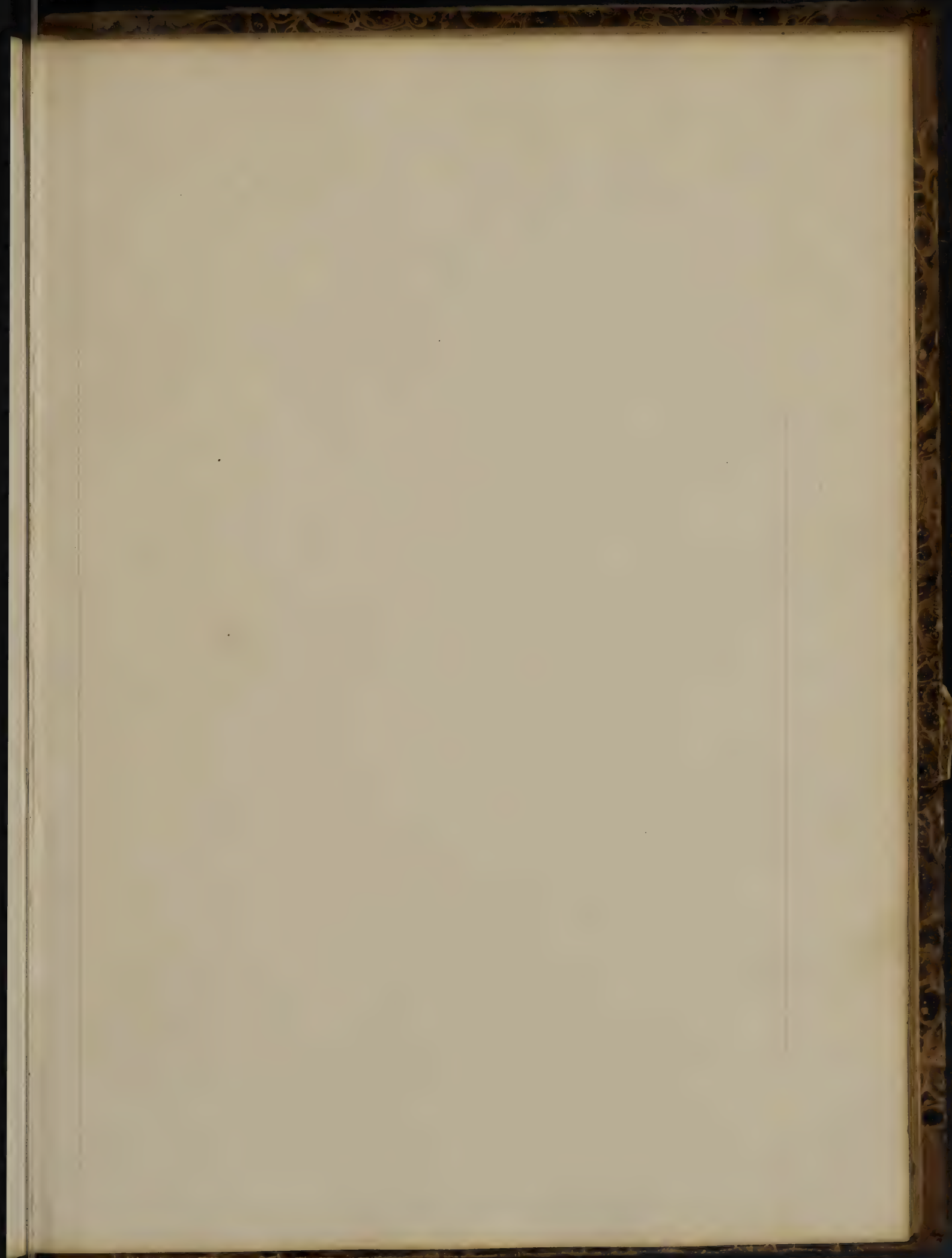
But in Equity the deed might
be considered as obtained by oppression
by unfair advantage of the maker's
situation amounting to fraud.

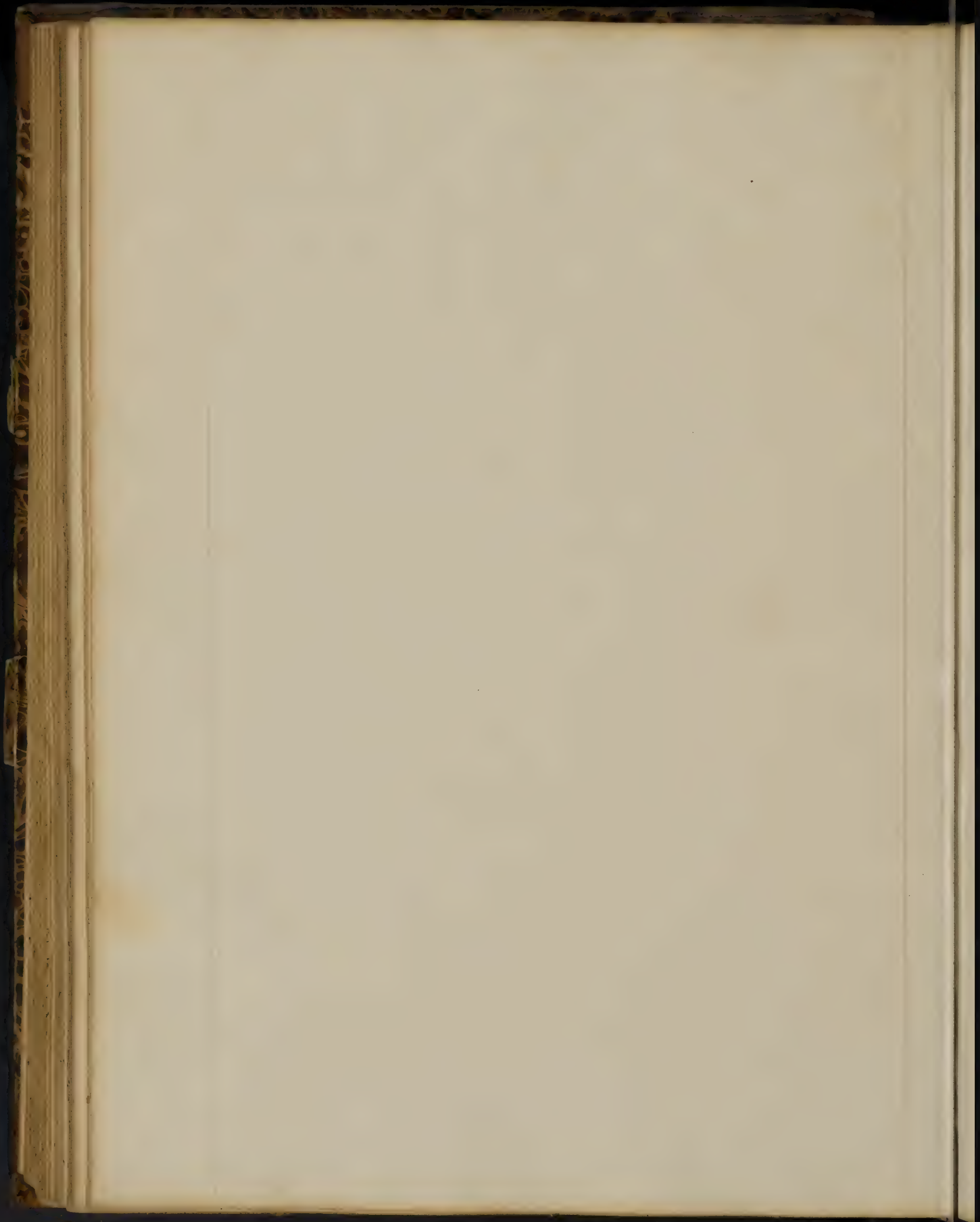
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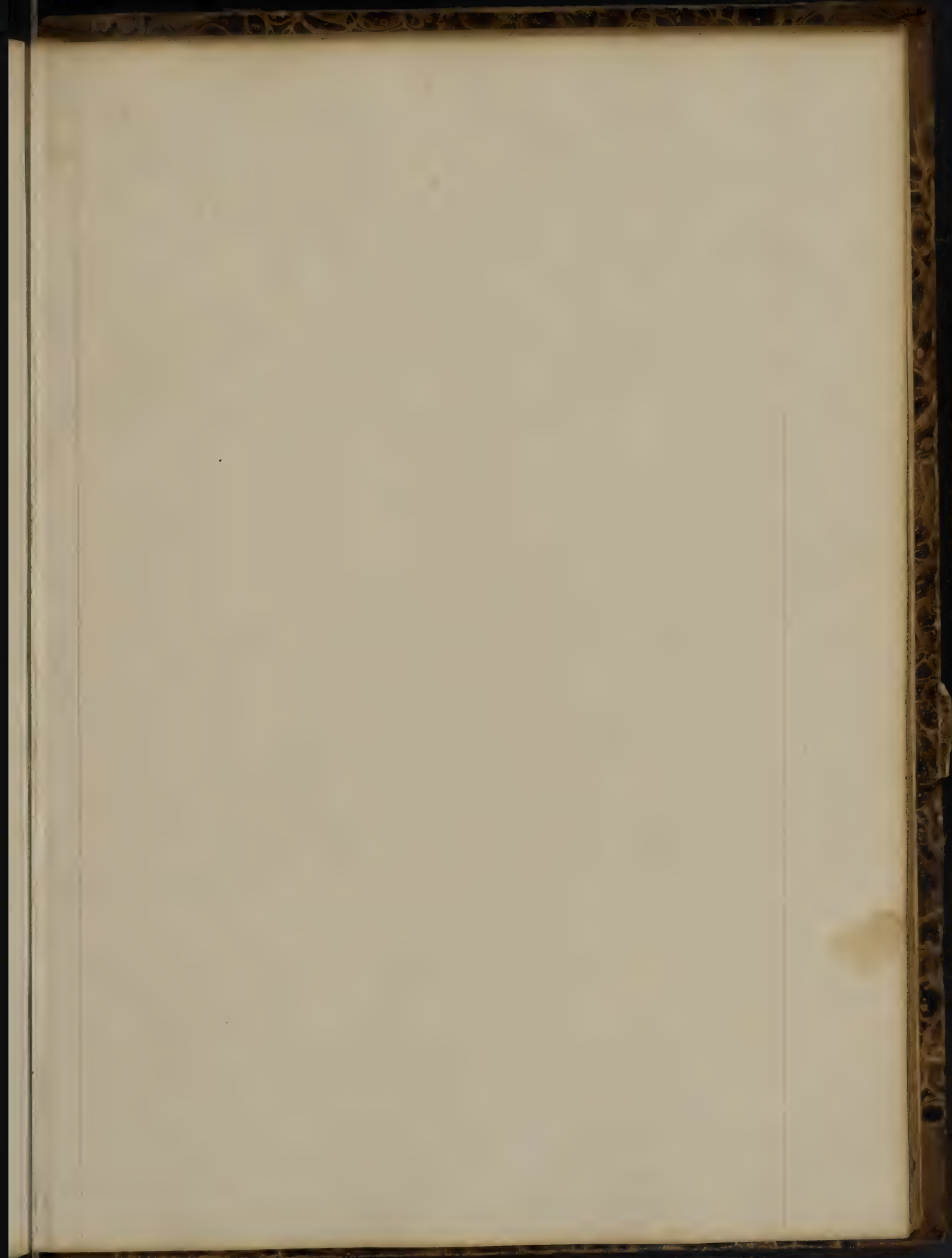


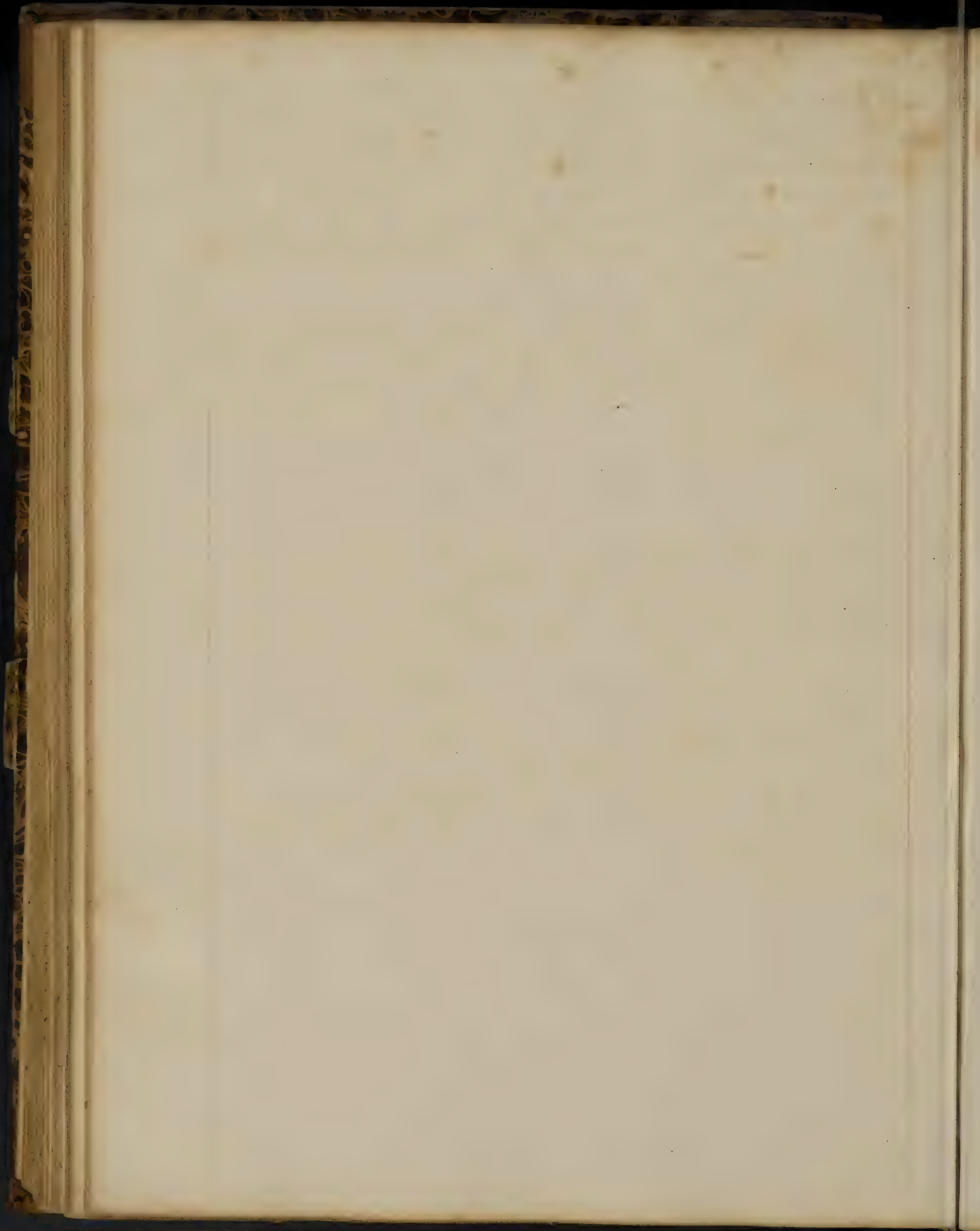












Partnership

The word partnership denotes the relation which exists between persons who by mutual contract have united their money goods, labour & skill or some or all of them in some lawful business with an agreement to divide the profits & bear the losses of that business proportionably

It seems to be of the essence of the contract of partnership that the partners should have a common interest in the stock of the company and be jointly concerned in profit or loss.

II How is the relation of partners created.

Persons may be liable to others as partners where no partnership in fact exists as between themselves

thus, if I suffer another to hold me out to the world as in company with him suffer him to use my name &c I become liable as partner with him whom I thus permit to use my name to all who give credit to the company

So if a partner after retiring from a partnership permits his name still to be used in the business of the company

So if a person partakes of the profits of a business he is answerable to creditors as a partner in that business, he takes from the creditors a portion of the fund to which they look for the payment of their debts.

The late case, however, admitted an exception to this rule. The exception Lord Eldon said was too refined & subtle for his understanding. It is this, that if an agent for instance is to receive as a compensation for his services, a sum equal to one fourth for instance of the profit of a business, which sum the agent receives as payment for services & not as profit in the character of profit then the agent is not liable as partner to third persons.

Persons become partners as between themselves, when by mutual contract they unite their money &c in business with an agreement to divide &c.

A contract that an agent broker &c shall receive part of the profits of a business for his trouble will not of course create the relation of partners as between the parties to the contract tho' the receipt of the profits may render the agent liable to third persons as a partner 2 B & C 401. for the contract does not unite the property of the parties, the parties do not intend that a common stock shall be created in which the agent shall have an interest.

